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LETTER DATED 29 MARCH 1993 FROM THE SECRETARY-GENERAL ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to transmit herewith the report presented on 15 March 1993 by the Commission on the Truth established under the peace agreements between the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (FMLN) (see annex).

As you are aware, the report contains a set of recommendations that are binding on the Parties. As part of the mandate entrusted to the United Nations to verify implementation of all agreements reached between the Government of El Salvador and FMLN, I have today addressed to the President of El Salvador and the General Coordinator of FMLN requests that each of them inform ONUSAL of the measures he intends to take to implement the recommendations of the Commission, together with the timetable for the execution of such measures.

Also today, the Acting Chief of the United Nations Observer Mission in El Salvador, General Victor Suanzes, has been instructed to address a letter to the Comisión Nacional para la Consolidación de la Paz (COPAZ), which, under the peace agreements, is mandated to supervise the implementation of political agreements reached between the Parties. In that letter, General Suanzes will inform COPAZ of the request for information which I have addressed to the Government of El Salvador and FMLN and will ask the Commission to inform ONUSAL of the steps it intends to take to discharge the responsibilities entrusted to it under the peace agreements.

I should be grateful if you would bring this information to the attention of the members of the Security Council.

(Signed) Boutros BOUTROS-GHALI

93-20927 (E) 190593 270593 280593

/...

Annex

[Original: Spanish]

FROM MADNESS TO HOPE

The 12-year war in El Salvador

REPORT OF THE COMMISSION ON THE TRUTH FOR EL SALVADOR

THE COMMISSION ON THE TRUTH
FOR EL SALVADOR

Belisario Betancur
Chairman

Reinaldo Figueredo Planchart

Thomas Buergenthal

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* The annexes are available for consultation in the language of submission (Spanish) in the Dag Hammarsjköld Library.

"... all these things happened among us ..."

MAYAN POEM

I. INTRODUCTION

Between 1980 and 1991, the Republic of El Salvador in Central America was engulfed in a war which plunged Salvadorian society into violence, left it with thousands and thousands of people dead and exposed it to appalling crimes, until the day - 16 January 1992 - when the parties, reconciled, signed the Peace Agreement in the Castle of Chapultepec, Mexico, and brought back the light and the chance to re-emerge from madness to hope.

A. INSTITUTIONS AND NAMES

Violence was a fire which swept over the fields of El Salvador; it burst into villages, cut off roads and destroyed highways and bridges, energy sources and transmission lines; it reached the cities and entered families, sacred areas and educational centres; it struck at justice and filled the public administration with victims; and it singled out as an enemy anyone who was not on the list of friends. Violence turned everything to death and destruction, for such is the senselessness of that breach of the calm plenitude which accompanies the rule of law, the essential nature of violence being suddenly or gradually to alter the certainty which the law nurtures in human beings when this change does not take place through the normal mechanisms of the rule of law. The victims were Salvadorians and foreigners of all backgrounds and all social and economic classes, for in its blind cruelty violence leaves everyone equally defenceless.

When there came pause for thought, Salvadorians put their hands to their hearts and felt them pound with joy. No one was winning the war, everyone was losing it. Governments of friendly countries and organizations the world over that had looked on in anguish at the tragic events in that Central American country which, although small, was made great by the creativity of its people - all contributed their ideas to the process of reflection. A visionary, Javier Pérez de Cuéllar, then Secretary-General of the United Nations, heeded the unanimous outcry and answered it. The Presidents of Colombia, Mexico, Spain and Venezuela supported him. The Chapultepec Agreement expressed the support of the new Secretary-General, Mr. Boutros Boutros-Ghali, for the search for reconciliation.

B. THE CREATIVE CONSEQUENCES

On the long road of the peace negotiations, the need to reach agreement on a Commission on the Truth arose from the Parties' recognition that the communism which had encouraged one side had collapsed, and perhaps also from the disillusionment of the Power which had encouraged the other. It emerged as a link in the chain of reflection and agreement and was motivated, ultimately, by the impact of events on Salvadorian society, which now faced the urgent task of confronting the issue of the widespread, institutionalized impunity which had struck at its very heart: under the protection of State bodies but outside the law, repeated human rights violations had been committed by members of the armed forces; these same rights had also been violated by members of the guerrilla forces.

In response to this situation, the negotiators agreed that such repugnant acts should be referred to a Commission on the Truth, which was the name they agreed to give it from the outset. Unlike the Ad Hoc Commission, so named because there was no agreement on what to call the body created to purify the armed forces, the Commission on the Truth was so named because its very purpose and function were to seek, find and publicize the truth about the acts of violence committed by both sides during the war.

The truth, the whole truth and nothing but the truth, as the oath goes. The overall truth and the specific truth, the radiant but quiet truth. The whole and its parts, in other words, the bright light shone onto a surface to illuminate it and the parts of this same surface lit up case by case, regardless of the identity of the perpetrators, always in the search for lessons that would contribute to reconciliation and to abolishing such patterns of behaviour in the new society.

Learning the truth and strengthening and tempering the determination to find it out; putting an end to impunity and cover-up; settling political and social differences by means of agreement instead of violent action: these are the creative consequences of an analytical search for the truth.

C. THE MANDATE

Furthermore, by virtue of the scope which the negotiators gave to the agreements, it was understood that the Commission on the Truth would have to examine systematic atrocities both individually and collectively, since the flagrant human rights violations which had shocked Salvadorian society and the international community had been carried out not only by members of the armed forces but also by members of the insurgent forces.

The peace agreements were unambiguous when, in article 2, they defined the mandate and scope of the Commission as follows: "The Commission shall have the task of investigating serious acts of violence that have occurred since 1980 and whose impact on society urgently demands that the public should know the truth". Article 5 of the Chapultepec Peace Agreement gives the Commission the task of clarifying and putting an end to any indication of impunity on the part of officers of the armed forces and gives this explanation: "acts of this nature, regardless of the sector to which their perpetrators belong, must be the object of exemplary action by the law courts so that the punishment prescribed by law is meted out to those found responsible".

It is clear that the peace negotiators wanted this new peace to be founded, raised and built on the transparency of a knowledge which speaks its name. It is also clear that this truth must be made public as a matter of urgency if it is to be not the servant of impunity but an instrument of the justice that is essential for the synchronized implementation of the agreements which the Commission is meant to facilitate.

D. "OPEN-DOOR" POLICY

From the outset of their work, which began on 13 July 1992 when they were entrusted with their task by the Secretary-General of the United Nations, the Commissioners could perceive the skill of those who had negotiated the agreements in the breadth of the mandate and authority given to the Commission. They realized that the Secretary-General, upon learning from competent Salvadorian judges of the numerous acts of violence and atrocities of 12 years of war, had not been wrong in seeking to preserve the Commission's credibility by looking beyond considerations of sovereignty and entrusting this task to three scholars from other countries, in contrast to what had been done in Argentina and Chile after the military dictatorships there had ended. The Commissioners also saw a glimmer of hope dawn in the hearts of the Salvadorian people when it became clear that the truth would soon be revealed, not through bias or pressure but in its entirety and with complete impartiality, a fact which helped to restore the faith of people at all levels that justice would be effective and fitting. Accordingly, in their first meeting with the media upon arriving in El Salvador, the Commissioners stated that they would not let themselves be pressured or impressed: they were after the objective truth and the hard facts.

The Commissioners and the group of professionals who collaborated with them in the investigations succeeded in overcoming obstacles and limitations that made it difficult to establish what had really happened, starting with the brief period of time - six months - afforded them under the Chapultepec Agreement. Given the magnitude of their task, this time-frame, which seemed to stretch into Kafkaesque infinity when they embarked upon their task, ultimately seemed meagre and barely sufficient to allow them to complete their work satisfactorily.

Throughout its mandate and while drafting its report, the Commission consistently sought to distance itself from events that had not been verified before it reached any conclusions. The whole of Salvadorian society, institutions and individuals familiar with acts of violence were invited to make them known to the Commission, under the guarantee of confidentiality and discretion provided for in the agreements. Paid announcements were placed in the press and on the radio and television to this end, and written and oral invitations were extended to the Parties to testify without restriction. Offices of the Commission were opened in various departmental capitals, including Chalatenango, Santa Ana and San Miguel. Written statements were taken, witnesses were heard, information from the sites of various incidents (e.g. El Calabozo, El Mozote, Sumpul river and Guancorita) was obtained. The Commission itself went to various departments with members of the professional team, occasionally travelling overland but more often in helicopters provided promptly and efficiently by ONUSAL. As the investigation moved forward, it continued to yield new pieces of evidence: anyone who might have been involved was summonsed to testify without restriction as to time or place, usually in the Commission's offices or in secret locations, often outside El Salvador in order to afford witnesses greater protection.

The Commission maintained an "open-door" policy for hearing testimony and a "closed-door" policy for preserving confidentiality. Its findings illustrate the horrors of a war in which madness prevailed, and confirm beyond the shadow of a doubt that the incidents denounced, recorded and substantiated in this

report actually took place. Whenever the Commission decided that its investigation of a specific case had yielded sufficient evidence, the matter was recorded in detail, with mention of the guilty parties. When it was determined that no further progress could be made for the time being, the corresponding documentation that was not subject to secrecy was delivered to the courts or else kept confidential until new information enabled it to be reactivated.

One fact must be squarely denounced: owing to the destruction or concealment of documents, or the failure to divulge the locations where numerous persons were imprisoned or bodies were buried, the burden of proof occasionally reverted to the Commission, the judiciary and citizens, who found themselves forced to reconstruct events. It will be up to those who administer the new system of justice to pursue these investigations and take whatever final decisions they consider appropriate at this moment in history.

Inevitably, the list of victims is incomplete: it was compiled on the basis of the complaints and testimony received and confirmed by the Commission.

E. A CONVULSION OF VIOLENCE

The warped psychology engendered by the conflict led to a convulsion of violence. The civilian population in disputed or guerrilla-controlled areas was automatically assumed to be the enemy, as at El Mozote and the Sumpul river. The opposing side behaved likewise, as when mayors were executed, the killings justified as acts of war because the victims had obstructed the delivery of supplies to combatants, or when defenceless pleasure-seekers became military targets, as in the case of the United States marines in the Zona Rosa of San Salvador. Meanwhile, the doctrine of national salvation and the principle of "he who is not for me is against me" were cited to ignore the neutrality, passivity and defencelessness of journalists and church workers, who served the community in various ways.

Such behaviour also led to the clandestine refinement of the death squads: the bullet which struck Monsignor Romero in the chest while he was celebrating mass on 24 March 1980 in a San Salvador church is a brutal symbol of the nightmare the country experienced during the war. And the murder of the six Jesuit priests 10 years later was the final outburst of the delirium that had infected the armed forces and the innermost recesses of certain government circles. The bullet in the portrait of Monsignor Romero, mute witness to this latest crime, repeats the nightmare image of those days.

F. PHENOMENOLOGY OF VIOLENCE

It is a universally accepted premise that the individual is the subject of any criminal situation, since humans alone possess will and can therefore take decisions based on will: it is individuals that commit crimes, not the institutions they have created. As a result, it is to individuals and not their institutions that the corresponding penalties established by law must be applied.

However, there could be some situations in which the repetition of acts in time and space would seem to contradict the above premise. A situation of repeated criminal acts may arise in which different individuals act within the

same institution in unmistakably similar ways, independently of the political ideology of Governments and decision makers. This gives reason to believe that institutions may indeed commit crimes, if the same behaviour becomes a constant of the institution and, especially, if clear-cut accusations are met with a cover-up by the institution to which the accused belong and the institution is slow to act when investigations reveal who is responsible. In such circumstances, it is easy to succumb to the argument that repeated crimes mean that the institution is to blame.

The Commission on the Truth did not fall into that temptation: at the beginning of its mandate, it received hints from the highest level to the effect that institutions do not commit crimes and therefore that responsibilities must be established by naming names. At the end of its mandate, it again received hints from the highest level, this time to the opposite effect, namely, that it should not name names, perhaps in order to protect certain individuals in recognition of their genuine and commendable eagerness to help create situations which facilitated the peace agreements and national reconciliation.

However, the Commission believes that responsibility for anything that happened during the period of the conflict could not and should not be laid at the door of the institution, but rather of those who ordered the procedures for operating in the way that members of the institution did and also of those who, having been in a position to prevent such procedures, were compromised by the degree of tolerance and permissiveness with which they acted from their positions of authority or leadership or by the fact that they covered up incidents which came to their knowledge or themselves gave the order which led to the action in question. This approach protects institutions and punishes criminals.

G. THE RECOVERY OF FAITH

As this Commission submits its report, El Salvador is embarked on a positive and irreversible process of consolidation of internal peace and modification of conduct for the maintenance of a genuine, lasting climate of national coexistence. The process of reconciliation is restoring the nation's faith in itself and in its leaders and institutions. This does not mean that all the obstacles and difficulties in implementing the commitments made in the negotiations have been overcome: the particular sensitivity of some of these commitments, such as the commitment to purify the armed forces, is creating resistance to the administrative action which must be taken by President Alfredo Cristiani, who on many counts deserves widespread recognition as the driving force behind the peace agreements.

One fundamental element of the agreements, and one which is critical for El Salvador's democratic future, is the unreserved, unconditional subordination of the military authorities to civilian authority, not only on paper but in reality: in a democratic system based on respect for the constitutional order and governed by the rule of law, there is room neither for conditions, personal compromises or the possibility of subverting order for personal reasons, nor for acts of intimidation against the President of the Republic who, by virtue of his office, is the Commander-in-Chief of the armed forces.

H. THE RISK OF DELAYS

The purification which is to follow the reports of the Ad Hoc Commission and the Commission on the Truth may seem inadvisable in cases where a person guilty of a serious crime in the past rectified his behaviour and contributed to the negotiated peace. This, however, is the small price that those who engage in punishable acts must pay, regardless of their position: they must accept it for the good of the country and the democratic future of the new Salvadorian society. Moreover, it is not up to the Commission to act on complaints, requests for pardon or pleas of attenuating circumstances from persons dismissed from the armed forces, because it has no binding judicial powers. It is not by resignation but by its creative attitude towards its new commitments and the new order of democratic coexistence that Salvadorian society as a whole will ultimately strike a balance in dealing with those who must take the blame for what they did during the conflict but deserve praise for what they did in the peace process.

El Salvador needs new souls. By its response to the murder of the Jesuits, 10 years after the assassination of Monsignor Romero by that nightmarish creation the "death squads", the military leadership showed just how far its position had hardened in daring to eliminate those it viewed as opponents, either because they were opponents or because they voiced concern, including church workers and journalists. In the uproar that followed, the most perverse sentiments came to the fore and the most absurd obfuscation was used in an attempt to cover up the truth as to who had given the orders.

What is more, it would tarnish the image of the armed forces if they were to retain sufficient power to block the process of purification or impose conditions on it: if the guilty were not singled out and punished, the institution itself would be incriminated; no other interpretation is possible. Those who would have the armed forces choose this course must weigh the price of such an attitude in the eyes of history.

I. FOUNDATION FOR THE TRUTH

The mass of reports, testimony, newspaper and magazine articles and books published in Spanish and other languages that was accumulated prompted the establishment within the Commission on the Truth itself of a centre for documentation on the different forms of violence in El Salvador. The public information relating to the war (books, pamphlets, research carried out by Salvadorian and international bodies); testimony from 2,000 primary sources referring to more than 7,000 victims; information from secondary sources relating to more than 20,000 victims; information from official bodies in the United States and other countries; information provided by government bodies and FMLN; an abundant photographic and videotape record of the conflict and even of the Commission's own activities; all of this material constitutes an invaluable resource - a part of El Salvador's heritage because (despite the painful reality it records) a part of the country's contemporary history - for historians and analysts of this most distressing period and for those who wish to study this painful reality in order to reinforce the effort to spread the message "never again".

What is to be done with this wealth of material in order to make it available to those around the world who are seeking peace, to bring these personal experiences to the attention of those who defend human rights? What is to be done when one is bound by the requirement of confidentiality for documents and testimony? What use is to be made of this example of the creativity of the United Nations at a time in contemporary history which is fraught with conflict and turmoil and for which the parallels and the answers found in the Salvadorian conflict may be of some relevance?

To guarantee the confidentiality of testimony and of the many documents supplied by institutions and even by Governments and, at the same time, to provide for the possibility of consultation by academic researchers while preserving such confidentiality, the Commission obtained the agreement of the Parties and the consent and support of the International Rule of Law Center of George Washington University in Washington, D.C., which, since 1992, has been administering and maintaining the collection of documents relating to the transition to peace in countries under the rule of oppression and countries emerging from armed conflicts. In addition, the Commission has already sought the cooperation of Governments, academic institutions and international foundations, always on the clear understanding that it holds itself personally responsible for guaranteeing confidentiality before finally handing the archives over to their lawful owners.

The Foundation for the Truth would be a not-for-profit academic body governed by statutes conforming to United States law. It would be managed by an international Board of Directors, with Salvadorian participation; a representative of the Secretary-General of the United Nations and the members of the Commission would also be members of the Board. The Foundation would be operated under the direction of Professor Thomas Buergenthal and would maintain close contacts with leaders and researchers in El Salvador, with the group of European, United States and Latin American professionals who worked with the Commission, and with scientists from around the world. For those documents which were not subject to secrecy, duplicate copies and computer terminals for accessing the collection would be available in Salvadorian institutions requesting them.

The Foundation would be inaugurated in June 1993, in Washington, with a multidisciplinary encounter to discuss the report of the Commission on the Truth.

J. EXPRESSIONS OF GRATITUDE

The Commission places on record its admiration for and gratitude to the Salvadorian people, without exception, for the courage they have shown throughout the terrible ordeal of the conflict and for the outstanding spirit which they have generously demonstrated in the peace process. It also expresses its gratitude to President Cristiani and the members of his Government, and to the Commanders and members of the Frente Farabundo Martí para la Liberación Nacional (FMLN), for cooperating with it in the performance of its tasks.

The Commission further expresses its gratitude to the Secretaries-General of the United Nations, Mr. Javier Pérez de Cuéllar and Mr. Boutros Boutros-Ghali, and to Assistant Secretary-General Mr. Alvaro de Soto and his

staff for their efficient cooperation. It also thanks ONUSAL, in particular, its Director, Mr. Iqbal Riza, for their diligence and expeditiousness in providing logistical and security support, and legal expert Mr. Pedro Nikken, whose knowledge of Central America is extensive.

We owe a debt of gratitude to the President of Colombia, Mr. César Gaviria Trujillo; the President of Mexico, Mr. Carlos Salinas de Gortari; the Prime Minister of Spain, Mr. Felipe González; and the President of Venezuela, Mr. Carlos Andrés Pérez known as "the four friends of the Secretary-General", and their ambassadors to the United Nations and El Salvador, for their constant and full support.

We also express our gratitude to Salvadorian political parties and their leaders; Salvadorian and international non-governmental organizations; the Catholic Church and its hierarchy and all religious faiths; the Directors and staff of the information media; and important public figures in El Salvador and outstanding international figures who have followed the conflict closely: without the cooperation of all these people it would have been impossible to penetrate the maze in which the truth often lay hidden.

This report would not have been possible without the collaboration of the interdisciplinary group of professionals from around the world who, under the direction of Ms. Patricia Valdez, for eight months devoted themselves with professionalism, objectivity and dedication to the task of seeking, unravelling and, on more than a few occasions, unearthing the truth.

K. THE DOMINANT IDEA

The members of the Commission are convinced from what they observed during six months of close association with Salvadorian society, that there is no place among the sorely tried Salvadorian people for bitterness or vengeance. There is likewise no intention to cause humiliation; nor does anyone today seek to harm the dignity of any human being by any action. Peace is always made by those who have fought the war, and all the former combatants have established forums for reconciliation in the new society. All are called upon to make a contribution, each according to the pain he has suffered and the love he has for his country. It falls to President Cristiani - the peace President - and his Government and the former insurgents, especially the former Commanders of FMLN, once again to play the leading role by setting a new course for El Salvador.

Salvadorian society - a society of sacrifice and hope - is watching them from the vantage point of history. The future of the nation summons them, a nation which is moving forward under the influence of one dominant idea: to lift itself out of the ruins in order to hold high like a banner the vision of its future. The nations of the international community are watching them in gladness. A new people is rising from the ashes of a war in which all were unjust. Those who perished are watching them from the great beyond. Those who hope are watching them from the heights of hope.

II. THE MANDATE

A. THE MANDATE

The Commission on the Truth owes its existence and authority to the El Salvador peace agreements, a set of agreements negotiated over a period of more than three years (1989-1992) between the Government of El Salvador and FMLN. The negotiating process, which took place under United Nations auspices with the special cooperation of Colombia, Mexico, Spain and Venezuela (the so-called "friends of the Secretary-General"), culminated in the Peace Agreement signed at Chapultepec, Mexico, on 16 January 1992. 1/

The decision to set up the Commission on the Truth was taken by the Parties in the Mexico Agreements, signed at Mexico City on 27 April 1991. 2/ These Agreements define the functions and powers of the Commission, while its authority is expanded by article 5 of the Chapultepec Peace Agreement, entitled "End to Impunity". 3/ Together, these provisions constitute the Commission's "mandate".

The mandate defines the Commission's functions as follows:

> "The Commission shall have the task of investigating serious acts of violence that have occurred since 1980 and whose impact on society urgently demands that the public should know the truth."

It then states that the Commission shall take the following into account:

> "(a) The exceptional importance that may be attached to the acts to be investigated, their characteristics and impact, and the social unrest to which they gave rise; and
>
> (b) The need to create confidence in the positive changes which the peace process is promoting and to assist the transition to national reconciliation."

The specific functions assigned to the Commission as regards impunity are defined, in part, in the Chapultepec Agreement, which provides as follows:

> "The Parties recognize the need to clarify and put an end to any indication of impunity on the part of officers of the armed forces, particularly in cases where respect for human rights is jeopardized. To that end, the Parties refer this issue to the Commission on the Truth for consideration and resolution."

In addition to granting the Commission powers with respect to impunity and the investigation of serious acts of violence, the peace agreements entrust the Commission with making "legal, political or administrative" recommendations. Such recommendations may relate to specific cases or may be more general. In the latter case, they "may include measures to prevent the repetition of such acts, and initiatives to promote national reconciliation".

The Commission was thus given two specific powers: the power to make investigations and the power to make recommendations. The latter power is

particularly important since, under the mandate, "the Parties undertake to carry out the Commission's recommendations". The Parties thus agree to be bound by the Commission's recommendations.

As regards the Commission's other task, the mandate entrusted it with investigating "serious acts of violence ... whose impact on society urgently demands that the public should know the truth". In other words, in deciding which acts to focus on, the Commission would have to take into account the particular importance of each act, its repercussions and the social unrest to which it gave rise. However, the mandate did not list or identify any specific cases for investigation; nor did it distinguish between large-scale acts of violence and acts involving only a handful of people. Instead, the mandate emphasized serious acts of violence and their impact or repercussions. On the basis of these criteria, the Commission investigated two types of cases:

(a) Individual cases or acts which, by their nature, outraged Salvadorian society and/or international opinion;

(b) A series of individual cases with similar characteristics revealing a systematic pattern of violence or ill-treatment which, taken together, equally outraged Salvadorian society, especially since their aim was to intimidate certain sectors of that society.

The Commission attaches equal importance to uncovering the truth in both kinds of cases. Moreover, these two types of cases are not mutually exclusive. Many of the so-called individual acts of violence which had the greatest impact on public opinion also had characteristics revealing systematic patterns of violence.

In investigating these acts, the Commission took into account three additional factors which have a bearing on the fulfilment of its mandate. The first was that it must investigate serious or flagrant acts committed by both sides in the Salvadorian conflict and not just by one of the Parties. Secondly, in referring the issue of the impunity "of officers of the armed forces, particularly in cases where respect for human rights is jeopardized" to the Commission, the Chapultepec Agreement urged the Commission to pay particular attention to this area and to acts of violence committed by officers of the armed forces which were never investigated or punished. Thirdly, the Commission was given six months in which to perform its task.

If we consider that the Salvadorian conflict lasted 12 years and resulted in a huge number of deaths and other serious acts of violence, it was clearly impossible for the Commission to deal with every act that could have been included within its sphere of competence. In deciding to investigate one case rather than another, it had to weigh such considerations as the representative nature of the case, the availability of sufficient evidence, the investigatory resources available to the Commission, the time needed to conduct an exhaustive investigation and the issue of impunity as defined in the mandate.

B. APPLICABLE LAW

The Commission's mandate entrusts it with investigating serious acts of violence, but does not specify the principles of law that must be applied in order to define such acts and to determine responsibility for them. Nevertheless, the concept of serious acts of violence used in the peace agreements obviously does not exist in a normative vacuum and must therefore be analysed on the basis of certain relevant principles of law.

In defining the legal norms applicable to this task, it should be pointed out that, during the Salvadorian conflict, both Parties were under an obligation to observe a number of rules of international law, including those stipulated in international human rights law or in international humanitarian law, or in both. Furthermore, throughout the period in question, the State of El Salvador was under an obligation to adjust its domestic law to its obligations under international law.

These rules of international law must be considered as providing the basis for the criteria applicable to the functions which the peace agreements entrust to the Commission. 4/ Throughout the Salvadorian conflict, these two sets of rules were only rarely mutually exclusive.

It is true that, in theory, international human rights law is applicable only to Governments, while in some armed conflicts international humanitarian law is binding on both sides: in other words, binding on both insurgents and Government forces. However, it must be recognized that when insurgents assume government powers in territories under their control, they too can be required to observe certain human rights obligations that are binding on the State under international law. This would make them responsible for breaches of those obligations.

The official position of FMLN was that certain parts of the national territory were under its control, and it did in fact exercise that control. 5/

1. International human rights law

The international human rights law applicable to the present situation comprises a number of international instruments adopted within the framework of the United Nations and the Organization of American States (OAS). These instruments, which are binding on the State of El Salvador, include, in addition to the Charters of the United Nations and OAS, the following human rights treaties: the International Covenant on Civil and Political Rights and the American Convention on Human Rights. El Salvador ratified the Covenant on 30 November 1979 and the American Convention on 23 June 1978. Both instruments entered into force for El Salvador before 1980 and were thus in force throughout the conflict to which the Commission's mandate refers.

Clearly, not every violation of a right guaranteed in those instruments can be characterized as a "serious act of violence". Those instruments themselves recognize that some violations are more serious than others. This position is reflected in a provision which appears in both instruments and which distinguishes between rights from which no derogation is possible, even in time of war or other state of national emergency, and those from which derogations

can be made in such circumstances. It is appropriate, therefore, that the Commission should classify the seriousness of each "act of violence" on the basis of the rights which the two instruments list as not being subject to derogation, in particular, rights related directly to the right to life and to physical integrity.

Accordingly, the following rights listed in article 4 of the Covenant as not being subject to derogation would come within the Commission's sphere of competence: the right to life ("No one shall be arbitrarily deprived of his life"); the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment; and the right not to be held in slavery or any form of servitude. Article 27 of the American Convention on Human Rights provides that these same rights cannot be suspended even "in time of war, public danger, or other emergency that threatens the independence or security of a State Party".

Under international law, it is illegal for a State, or for persons acting on its behalf, to violate any of the above rights for whatever reason. Violation of these rights may even constitute an international crime in situations where acts are of a consistent type or reflect a systematic practice whose purpose is the large-scale violation of these fundamental rights of the human person.

2. International humanitarian law

The principles of international humanitarian law applicable to the Salvadorian conflict are contained in article 3 common to the four Geneva Conventions of 1949 and in Additional Protocol II thereto. El Salvador ratified these instruments before 1980.

Although the armed conflict in El Salvador was not an international conflict as defined by the Conventions, it did meet the requirements for the application of article 3 common to the four Conventions. That article defines some fundamental humanitarian rules applicable to non-international armed conflicts. The same is true of Protocol II Additional to the Geneva Conventions, relating to the protection of victims of non-international armed conflicts. The provisions of common article 3 and of Additional Protocol II are legally binding on both the Government and the insurgent forces.

Without going into those provisions in detail, it is clear that violations - by either of the two parties to the conflict - of common article 3 6/ and of the fundamental guarantees contained in Additional Protocol II, 7/ especially if committed systematically, could be characterized as serious acts of violence for the purposes of the interpretation and application of the Commission's mandate. Such violations would include arbitrary deprivation of life; torture; cruel, inhuman or degrading treatment; taking of hostages; and denial of certain indispensable guarantees of due process before serious criminal penalties are imposed and carried out.

3. Conclusions

With few exceptions, serious acts of violence prohibited by the rules of humanitarian law applicable to the Salvadorian conflict are also violations of the non-repealable provisions of the International Covenant on Civil and Political Rights and the American Convention on Human Rights, the two human rights treaties ratified by the State of El Salvador. The two instruments also prohibit derogation from any rights guaranteed in any humanitarian law treaty to which the State is a party.

As a result, neither the Salvadorian State nor persons acting on its behalf or in its place can claim that the existence of an armed conflict justified the commission of serious acts of violence in contravention of one or other of the human rights treaties mentioned above or of the applicable instruments of humanitarian law binding on the State.

C. METHODOLOGY

In determining the methodology that would govern the conduct of the investigations essential to the preparation of this report, the Commission took a number of factors into account.

The text of its mandate was a binding condition and a starting-point for the Commission, in that it stated the Parties' intentions in this connection. The preamble to the mandate indicates that the Commission was established because the Parties recognized "the need to clear up without delay those exceptionally important acts of violence whose characteristics and impact ... urgently require that the complete truth be made known ...".

In establishing the procedure that the Commission was to follow in performing its functions, paragraph 7 of the mandate provided that the Commission would conduct its activities "on a confidential basis". Paragraph 5 established that "The Commission shall not function in the manner of a judicial body". Paragraph 8 (a) stipulated that "The Commission shall be completely free to use whatever sources of information it deems useful and reliable", while paragraph 8 (b) gave the Commission the power to "Interview, freely and in private, any individuals, groups or members of organizations or institutions". Lastly, in the fourth preambular paragraph of the mandate, the Parties agreed that the task entrusted to the Commission should be fulfilled "through a procedure which is both reliable and expeditious and may yield results in the short term, without prejudice to the obligations incumbent on the Salvadorian courts to solve such cases and impose the appropriate penalties on the culprits".

In analysing these provisions of the mandate, the Commission thought it important that the Parties had emphasized that "the Commission shall not function in the manner of a judicial body". In other words, not only did the Parties not establish a court or tribunal, but they made it very clear that the Commission should not function as if it were a judicial body. They wanted to make sure that the Commission was able to act on a confidential basis and receive information from any sources, public or private, that it deemed useful and reliable. It was given these powers so that it could conduct an investigation procedure that was both expeditious and, in its view, reliable in

order to "clear up without delay those exceptionally important acts of violence whose characteristics and impact ... urgently require that the complete truth be made known ...".

So it is clear that the Parties opted for an investigation procedure that, within the short period of time allotted, would be best fitted to establishing the truth about acts of violence falling within the Commission's sphere of competence, without requiring the Commission to observe the procedures and rules that normally govern the activities of any judicial or quasi-judicial body. Any judicial function that had to be performed would be reserved expressly for the courts of El Salvador. For the Parties, the paramount concern was to find out the truth without delay.

Another important overall consideration which influenced the Commission's methodology was the reality of the situation in El Salvador today. Not only was this reflected in the Commission's mandate, but it also had a profound impact on the Commission's investigation process and modus operandi. It forced the Commission to gather its most valuable information in exchange for assurances of confidentiality.

It was not just that the Parties authorized the Commission, in the peace agreements, to act on a confidential basis and to receive information in private; the reality of the situation in El Salvador forced it to do so for two reasons: first, to protect the lives of witnesses and, secondly, to obtain information from witnesses who, because of the climate of terror in which they continue to live, would not have provided such information if the Commission had not guaranteed them absolute confidentiality.

The situation in El Salvador is such that the population at large continues to believe that many military and police officers in active service or in retirement, Government officials, judges, members of FMLN and people who at one time or another were connected with the death squads are in a position to cause serious physical and material injury to any person or institution that shows a readiness to testify about acts of violence committed between 1980 and 1991. The Commission believes that this suspicion is not unreasonable, given El Salvador's recent history and the power still wielded or, in many cases, wielded until recently by people whose direct involvement in serious acts of violence or in covering up such acts is well known but who have not been required to account for their actions or omissions.

Even though the fears expressed by some potential witnesses may have been exaggerated, the fact is that in their minds the danger is real. As a result, they were not prepared to testify unless they were guaranteed absolute secrecy. It should be pointed out that many witnesses refused to give information to other investigatory bodies in the past precisely because they were afraid that their identity would be divulged.

The Commission can itself testify to the extreme fear of reprisals frequently expressed, both verbally and through their behaviour, by many of the witnesses it interviewed. It is also important to emphasize that the Commission was not in a position to offer any significant protection to witnesses apart from this guarantee of confidentiality. Unlike the national courts, for instance, the Commission did not have the authority to order precautionary

measures; neither, of course, did it have police powers. Besides, it is the perception of the public at large that the Salvadorian judicial system is unable to offer the necessary guarantees.

The Commission also received reports from some Governments and international bodies, on condition that the source was not revealed. This information was subjected to the same test of reliability as the other information received and was used principally to confirm or verify personal testimony and to guide the Commission in its search for other areas of investigation.

From the outset, the Commission was aware that accusations made and evidence received in secret run a far greater risk of being considered less trustworthy than those which are subjected to the normal judicial tests for determining the truth and to other related requirements of due process of law, including the right of the accused to confront and examine witnesses brought against him. Accordingly, the Commission felt that it had a special obligation to take all possible steps to ensure the reliability of the evidence used to arrive at a finding. In cases where it had to identify specific individuals as having committed, ordered or tolerated specific acts of violence, it applied a stricter test of reliability.

The Commission decided that, in each of the cases described in this report, it would specify the degree of certainty on which its ultimate finding was based. The different degrees of certainty were as follows:

1. Overwhelming evidence - conclusive or highly convincing evidence to support the Commission's finding;

2. Substantial evidence - very solid evidence to support the Commission's finding;

3. Sufficient evidence - more evidence to support the Commission's finding than to contradict it.

The Commission decided not to arrive at any specific finding on cases or situations, or any aspect thereof, in which there was less than "sufficient" evidence to support such a finding.

In order to guarantee the reliability of the evidence it gathered, the Commission insisted on verifying, substantiating and reviewing all statements as to facts, checking them against a large number of sources whose veracity had already been established. It was decided that no single source or witness would be considered sufficiently reliable to establish the truth on any issue of fact needed for the Commission to arrive at a finding. It was also decided that secondary sources, for instance, reports from national or international governmental or private bodies and assertions by people without first-hand knowledge of the facts they reported, did not on their own constitute a sufficient basis for arriving at findings. However, these secondary sources were used, along with circumstantial evidence, to verify findings based on primary sources.

It could be argued that, since the Commission's investigation methodology does not meet the normal requirements of due process, the report should not name the people whom the Commission considers to be implicated in specific acts of violence. The Commission believes that it had no alternative but to do so.

In the peace agreements, the Parties made it quite clear that it was necessary that the "complete truth be made known", and that was why the Commission was established. Now, the whole truth cannot be told without naming names. After all, the Commission was not asked to write an academic report on El Salvador, it was asked to investigate and describe exceptionally important acts of violence and to recommend measures to prevent the repetition of such acts. This task cannot be performed in the abstract, suppressing information (for instance, the names of persons responsible for such acts) where there is reliable testimony available, especially when the persons identified occupy senior positions and perform official functions directly related to violations or the cover-up of violations. Not to name names would be to reinforce the very impunity to which the Parties instructed the Commission to put an end.

In weighing aspects related to the need to protect the lives of witnesses against the interests of people who might be adversely affected in some way by the publication of their names in the report, the Commission also took into consideration the fact that the report is not a judicial or quasijudicial determination as to the rights or obligations of certain individuals under the law. As a result, the Commission is not, in theory, subject to the requirements of due process which normally apply, in proceedings which produce these consequences.

Furthermore, the Commission's application of strict criteria to determine the degree of reliability of the evidence in situations where people have been identified by name, and the fact that it named names only when it was absolutely convinced by the evidence, were additional factors which influenced the Commission when it came to take a decision on this analysis. As a result, the Commission is satisfied that the criteria of impartiality and reliability which it applied throughout the process were fully compatible with the functions entrusted to it and with the interests it had to balance.

The considerations which prompted the Commission to receive confidential information without revealing the source also forced it to omit references from both the body and the footnotes of the reports on individual cases, with the exception of references to certain public, official sources. As a result, reference is made to official trial proceedings and other similar sources, but not to testimony or other information gathered by the Commission. The Commission took this approach in order to reduce the likelihood that those responsible for the acts of violence described herein, or their defenders, would be able to identify the confidential sources of information used by the Commission. In some of the reports on individual cases, the Commission also omitted details that might reveal the identity of certain witnesses.

III. CHRONOLOGY OF THE VIOLENCE

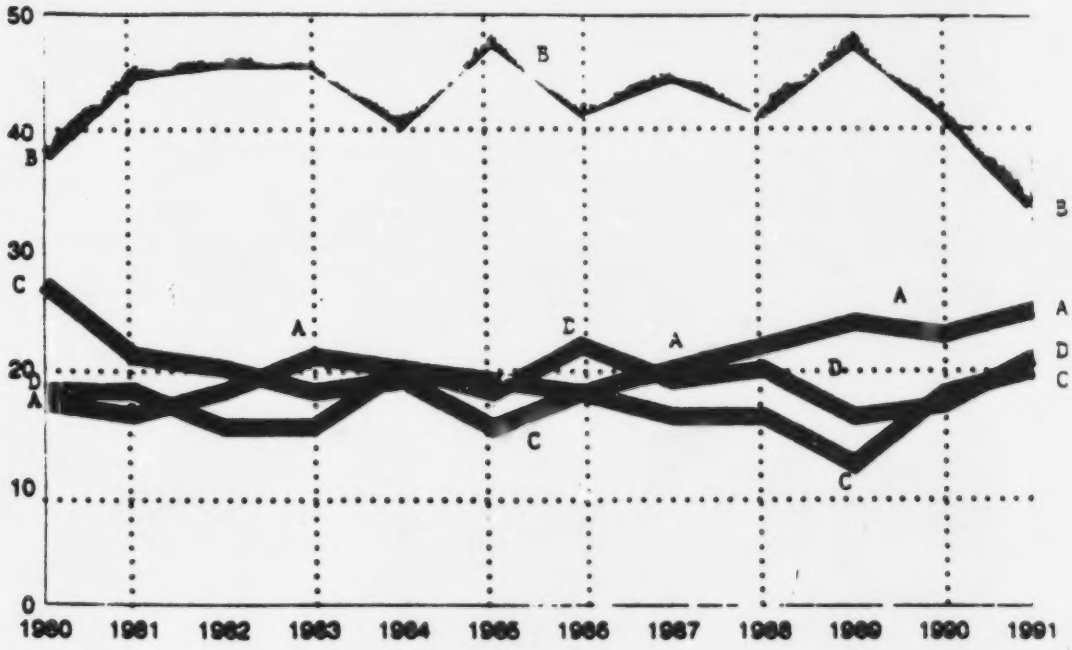
INTRODUCTION

The Commission on the Truth had the task of investigating and analysing serious acts of violence that had occurred in El Salvador between January 1980 and July 1991.

In taking into account "the exceptional importance that may be attached to the acts to be investigated, their characteristics and impact, and the social unrest to which they gave rise", 8/ the Commission, for methodological reasons, divided the years 1980-1991 into four periods, namely: 1980-1983, 1983-1987, 1987-1989 and 1989-1991. Each of these periods corresponds to political changes in the country, developments in the war and the systematic nature or frequency of certain practices that violated human rights and international humanitarian law.

Frequency of reports in the Salvadorian press concerning acts of violence

(For more information, see annex 3)



A Peasant massacres* B Murder of individuals* C Disappearances* D Abductions*

* Average percentage of reports.

I. 1980-1983: THE INSTITUTIONALIZATION OF VIOLENCE

The main characteristics of this period were that violence became systematic and terror and distrust reigned among the civilian population. The fragmentation of any opposition or dissident movement by means of arbitrary arrests, murders and selective and indiscriminate disappearances of leaders became common practice. Repression in the cities targeted political organizations, trade unions and organized sectors of Salvadorian society, as exemplified by the persecution of organizations such as the Asociación Nacional de Educadores Salvadoreños (ANDES), 9/ murders of political leaders 10/ and attacks on human rights bodies. 11/

The Frente Farabundo Martí para la Liberación Nacional (FMLN) was formed in late 1980 and in January 1981, the first large-scale military offensive left hundreds of people dead. Starting in 1980, there was a succession of indiscriminate attacks on the non-combatant civilian population and also collective summary executions, particularly against the rural population. 12/ There were appalling massacres, such as those at the Sumpul river (14-15 May 1980), the Lempa river (20-29 October 1981) and El Mozote (December 1981). Organized terrorism, in the form of the so-called "death squads", became the most aberrant manifestation of the escalation of violence. Civilian and military groups engaged in a systematic murder campaign with total impunity, while State institutions turned a blind eye. 13/ The murder of Monsignor Romero exemplified the limitless, devastating power of these groups. This period saw the greatest number of deaths and human rights violations.

1980

The Government of General Carlos Humberto Romero (July 1977-October 1979) was overthrown on 15 October 1979. The Revolutionary Government Junta (JRG) composed of Colonel Jaime Abdul Gutiérrez and Colonel Adolfo Majano announced its main goals: an end to violence and corruption, guarantees for the exercise of human rights, adoption of measures to ensure the fair distribution of national wealth and a positive approach to external relations. 14/

On 18 October 1979, elections were announced for February 1982. Measures were enacted restricting landholdings to a maximum of 100 hectares (Decree No. 43 of 6 December 1979). The organization ORDEN 15/ was dissolved on 6 November 1979 and the Salvadorian national security agency (ANSESAL) was dismantled. 16/

The political struggle between civilians and conservative military sectors intensified, against a backdrop of social upheaval and mobilization. Left-wing organizations such as the Bloque Popular Revolucionario (BPR), the Ligas Populares 28 de Febrero (LP-28) and the Frente de Acción Popular Unificada (FAPU), among others, held public demonstrations, occupied ministries and organized strikes demanding the release of political prisoners. Economic measures and land tenure reforms were adopted. The organizations BPR, FAPU, LP-28 and the Unión Democratíca Nacionalista (UDN) came together to form the Coordinadora Revolucionaria de Masas (CRM). 17/ On 22 January, the National Guard attacked a massive CRM demonstration, described by Monsignor Romero as peaceful, killing somewhere between 22 and 50 people and wounding hundreds more.

Anti-Government violence erupted in the form of occupations of radio stations, bombings of newspapers (La Prensa Gráfica and El Diario de Hoy), abductions, executions and attacks on military targets, particularly by the Fuerzas Populares de Liberación (FPL) and the Ejército Revolucionario del Pueblo (ERP).

On 3 January 1980, the three civilian members of the Junta resigned, along with 10 of the 11 cabinet ministers. 18/ The Junta was again in crisis. The Agrarian Reform Act 19/ and the nationalization of banks were announced. On 9 March, José Napoleón Duarte became a member of the Junta when the Christian Democratic Party expelled Dada Hizeri, Rubén Zamora and other leaders from its ranks. The process of political polarization triggered an unprecedented increase in death squad activities.

On 6 February, United States Ambassador Frank Devine informed the State Department that mutilated bodies were appearing on roadsides as they had done in the worst days of the Romero regime and that the extreme right was arming itself and preparing for a confrontation in which it clearly expected to ally itself with the military. 20/

On 22 February, PDC leader and Chief State Counsel Mario Zamora was murdered at his home, only days after the Frente Amplio Nacional (FAN), headed by former National Guard Major Roberto D'Aubuisson, had accused him publicly of being a member of subversive groups (see the case in chap. IV).

On 24 March, Monsignor Oscar Arnulfo Romero was shot dead by a sniper as he celebrated mass in the Chapel of the Hospital de la Divina Providencia 21/ (see the case in chap. IV). This crime further polarized Salvadorian society and became a milestone, symbolizing the point at which human rights violations reached their peak and presaging the all-out war between the Government and the guerrillas that was to come. During the funeral, a bomb went off outside San Salvador Cathedral. The panic-stricken crowd, estimated at 50,000 people, was machine-gunned, leaving an estimated 27 to 40 people dead and more than 200 wounded. 22/

On 7 May 1980, Major Roberto D'Aubuisson 23/ was arrested on a farm, along with a group of civilians and soldiers. In the raid, a significant quantity of weapons and documents were found implicating the group in the organization and financing of death squads allegedly involved in Archbishop Romero's murder. The arrests triggered a wave of terrorist threats and institutional pressures which culminated in D'Aubuisson's release. This strengthened the most conservative sector in the Government 24/ and was a clear example of the passivity and inertia of the judiciary during this period. 25/

Government measures 26/ and illegal repressive measures were taken to dismantle the country's legal structure and neutralize the opposition. 27/

Between 12 and 15 August, a general strike called by FDR, a coalition of centre-left parties, was violently suppressed, leaving 129 people dead. 28/ On 27 November, Alvarez Córdoba and six FDR leaders were abducted. Their bodies were found later, bearing signs of torture (see the case in chap. IV). A few days later, the Brigada Anticomunista General Maximiliano Hernández Martínez issued a communiqué claiming responsibility for the killings.

Between October and November 1980, the five armed opposition groups - Fuerzas Populares de Liberación (FPL), Ejército Revolucionario del Pueblo (ERP), Fuerzas Armadas de Liberación (FAL), Fuerzas Armadas de Resistencia Nacional (FARN) and Partido Revolucionario de los Trabajadores de Centroamérica (PRTC) - formed the Frente Farabundo Martí para la Liberación Nacional (FMLN).

In late 1980, as a change of Administration was taking place in the United States, the violence in El Salvador reached United States citizens. On 2 December, four churchwomen were arrested, raped and murdered by members of the National Guard (see the case in chap. IV). At the end of the year, Colonel Majano was removed from the Junta and Napoleón Duarte became President. 29/

The Commission on the Truth received direct complaints concerning 2,597 victims of serious acts of violence occurring in 1980. 30/

1981

Individual extrajudicial executions continued and mass executions in rural areas increased. On 3 January, the President of the Salvadorian Institute for Agrarian Reform and two United States advisers were murdered in the Sheraton Hotel 31/ (see the case in chap. IV). This incident was part of a campaign of murders of cooperative leaders and beneficiaries of the agrarian reform.

On 10 January, FMLN launched the "final offensive" announced in late 1980. 32/ Attacks were launched on military targets throughout the country, leaving hundreds of people dead. Government sources reported that "at least 500 extremists" had died in the final offensive. Because of FMLN actions, the state of siege decreed by the Junta was maintained until October 1981.

The violence in El Salvador began to attract international attention and to have international repercussions. External political forces began to claim that the Salvadorian conflict was part of the East-West confrontation. Other forces worked for a negotiated settlement of the conflict. 33/ Many sectors began to envisage the possibility of a negotiated settlement, provided that the necessary resources were available. On 14 January, the United States Administration restored military aid, which had been suspended after the murder of the United States churchwomen. 34/ The United States Government also significantly increased its military and economic assistance. The increasing flow of resources was intended to train, modernize and expand the structure of a number of elements of the armed forces. The Rapid Deployment Infantry Battalions (BIRI), specialized in anti-guerrilla warfare, also began to be created (Atlacatl: March 1981, Atonal: January 1982, Belloso: May 1982, etc.).

Counter-insurgency military operations affected the non-combatant civilian population, causing a high death toll and the emergence of a new phenomenon - displaced persons.

On 17 March, as they tried to cross the Lempa river to Honduras, a group of thousands of peasants was attacked from the air and from land. Between 20 and 30 people were reported killed and a further 189 reported missing as a result of the attack. Something similar happened in October on the banks of the same

river, on which occasion 147 peasants were killed, including 44 minors. In November, in Cabañas Department, a counter-insurgency operation surrounded and kept under attack for 13 days a group of 1,000 people who were trying to escape to Honduras. This time, between 50 and 100 people were reported killed. 35/ In late December, the Atlacatl Battalion carried out one of the worst massacres of the war, in various hamlets in and around El Mozote (see the case in chap. IV).

According to the Fundación Salvadoreña para el Desarrollo (FUSADES), by 1981 there were 164,000 displaced persons. The number of displaced persons leaving the country in search of refuge also increased, according to the report of the Office of the United Nations High Commissioner for Refugees (UNHCR). 36/ Furthermore, Christian Legal Aid reported 12,501 deaths in 1981. 37/

The Commission on the Truth received direct testimony concerning 1,633 victims of serious acts of violence occurring in 1981.

1982

The 60-member Constituent Assembly 38/ adopted a new Constitution and elected an interim Government. Although PDC won the most votes (40.3 per cent), ARENA (29.3 per cent), in alliance with the Partido de Conciliación Nacional (PCN) (19 per cent) and other minority parties, won control of the Assembly. Roberto D'Aubuisson was elected President of the Constituent Assembly and two PCN members were elected Vice-Presidents. The Assembly ratified the 1962 Political Constitution. 39/ It also elected Alvaro Magaña Provisional President of the Republic and Raúl Molina Martínez (PDC), Gabriel Mauricio Gutiérrez Castro (ARENA) and Pablo Mauricio Alvergue (PCN), Vice-Presidents.

Decree No. 6 of the National Assembly suspended phase III 40/ of the implementation of the agrarian reform, and was itself later amended. The Apaneca Pact was signed on 3 August 1982, establishing a Government of National Unity, whose objectives were peace, democratization, human rights, economic recovery, security and a strengthened international position. An attempt was made to form a transitional Government which would establish a democratic system. Lack of agreement among the forces that made up the Government and the pressures of the armed conflict prevented any substantive changes from being made during Magaña's Presidency.

FMLN attacked the Ilopango Air Force Base, destroying six of the Air Force's 14 UH-1H helicopters, five Ouragan aircraft and three C-47s. 41/ The guerrillas stepped up their activities against economic targets. Between February and April, a total of 439 acts of sabotage were reported 42/ and the number of acts of sabotage involving explosives or arson rose to 782 between January and September. 43/ The United States Embassy estimated the damage to the economic infrastructure at US$ 98 million. 44/ FMLN also carried out large-scale operations in the capital city and temporarily occupied urban centres in the country's interior. According to some reports, the number of rebels ranged between 4,000 and 5,000; other sources put the number at between 6,000 and 9,000. 45/

Combined land-air military operations by the armed forces sought to regain control of populated areas controlled by the rebels. In one of these operations (31 January), 150 civilians were reported killed by military forces in Nueva Trinidad and Chalatenango. On 10 March, some 5,000 peasants were fired at from helicopters and shelled as they fled the combat zone in San Esteban Catarina. In August, a military campaign of "pacification" in San Vicente reported 300 to 400 peasants killed. 46/ In late November, 5,000 soldiers took part in a 10-day counter-offensive in northern San Salvador. The Ministry of Defence reported at the end of the operation that four districts had been recovered, with 20 soldiers and 232 guerrilla fighters killed. 47/

On 31 August, the Comisión Nacional de Asistencia a la Población Desplazada (CONADES) reported that there were 226,744 internally displaced persons. By June of that year, the number of Salvadorian refugees in Latin American countries totalled between 175,000 and 295,000. 48/

The United States Embassy reported a total of 5,639 people killed, of whom 2,330 were civilians, 762 were members of the armed forces and 2,547 were members of the guerrilla forces. Christian Legal Aid reported that during the first eight months of 1982, there were a total of 3,059 political murders, "nearly all of them the result of action by Government agents against civilians not involved in military combat". 49/ The same source reported that the total number of civilian deaths in 1982 was 5,962. 50/

The death squads 51/ continued to operate with impunity in 1982. On 10 March, the Alianza Anticomunista de El Salvador published a list of 34 people who had been condemned to death for "discrediting the armed forces". Most of them were journalists. The Inter-American Commission on Human Rights, referring to the discovery of clandestine graves of death squad victims, reported that on 24 May the bodies of more than 150 people had been dumped at Puerta del Diablo, Panchimalco. 52/ On 27 May, the bodies of six members of the Christian Democratic Party were found at El Playón, another clandestine mass grave used by the death squads. 53/ President Duarte publicly denounced the extreme right wing, holding it responsible for the murder of hundreds of PDC members and mayors. Four Dutch journalists were killed on 17 March 1982 (see the case in chap. IV).

The Commission on the Truth received direct testimony concerning 1,145 victims of serious acts of violence occurring in 1982.

II. 1983-1987: VIOLATIONS WITHIN THE CONTEXT OF THE ARMED CONFLICT

Violations of life, physical integrity and security continued to occur in urban centres. The number of violations fell but was accompanied by greater selectivity. In 1982, 5,962 people died at the hands of government forces; by 1985 the number had fallen to 1,655. 54/

There began to be a marked decrease in the activities of the death squads. During a visit to El Salvador, in December 1983, Vice-President Bush publicly condemned the death squads. He demanded the removal of certain armed forces and security officers who were associated with human rights violations. The visit demonstrated that United States diplomatic pressure could bring about a reduction in the number of violations.

FMLN strengthened its structure and demonstrated strength in the military sphere. It carried out large-scale operations and exercised territorial control, albeit temporarily, in various parts of the country. In 1985, it began to use mines indiscriminately, causing many deaths among the civilian population. An intensive campaign for the destruction of economic targets unfolded, resulting in major property damage. Hostage-taking and murder, particularly of town mayors and government officials in areas of, or close to, the conflict became commonplace. The guerrillas sought thus to demonstrate, both within and outside the country, the existence of a "duality of power" in El Salvador.

During this phase, the military development of the war caused the armed forces to view the civilian population in the areas of conflict as "legitimate targets for attack". Indiscriminate aerial bombings, massive artillery attacks and infantry advances were carried out, all of which resulted in massacres and the destruction of communities in an effort to deprive the guerrillas of all means of survival. Because of the systematic use of this tactic by the armed forces, in violation of human rights, this phase was characterized by vast numbers of displaced persons and refugees. By 1984, there were reported to be 500,000 displaced persons within the country 55/ and 245,500 Salvadorian refugees abroad, bringing the total number of displaced persons to approximately one and a half million. Following much international criticism, the armed forces cut back on the use of air attacks against the civilian population.

1983

On 4 May, the Constituent Assembly passed an Amnesty Law for civilians involved in political offences. 56/ In November, it was agreed that the presidential elections, originally scheduled for December 1983, would be held on 25 March 1984. On 15 December, following 20 months of debate, the new Constitution was approved. 57/

Talks began between the Government and FDR-FMLN, although no positive results were achieved. Delegations from both sides met on 29 and 30 August in San José, Costa Rica, and on 29 September in Bogotá, under the auspices of the Presidents of the Contadora Group. 58/ On 7 October, President Magaña announced that the next round of talks had been cancelled, citing the refusal by FMLN to participate in elections. That same day, Víctor Manuel Quintanilla, the senior FDR representative residing in El Salvador, was found dead, together with three other persons. The Brigada Anticomunista Maximiliano Hernández Martínez claimed responsibility. 59/

FMLN continued its campaign of economic sabotage and its escalation of large-scale military actions. Between 15 and 18 January, the guerrillas launched an offensive and temporarily occupied towns in Morazán. On 29 January, in a similar action, FMLN occupied Berlín, a city of 35,000 inhabitants, for a period of three days, destroying the Police and the National Guard headquarters. For its part, the Government responded with a large-scale counter-offensive. Some days later, Monsignor Rivera y Damas accused the armed forces of being responsible for the high number of civilians killed - estimated at between 50 and 170 - and the property damage caused. On 22 February, uniformed soldiers kidnapped and summarily executed a group of peasants from a cooperative at

Las Hojas, Sonsonate; the number of dead was estimated at 70 (see this case in chap. IV). On 16 March, Marianela García Villas, President of the Human Rights Commission of El Salvador (non-governmental) was executed by security forces. 60/

Between January and June, there were 37 large-scale military operations by government forces. On 25-26 September, FMLN attacked army positions in Tenancingo, and A-37 aircraft responded with aerial bombings; some 100 civilians were killed in this operation. 61/ In November, troops from Atlacatl Battalion invaded an area close to Lake Suchitlán under rebel control, and 118 people were reported killed as a result of the action. 62/ Towards the end of the year, FMLN embarked on its biggest military action against El Paraíso military base in Chalatenango; it is estimated that more than 100 soldiers were killed in the attack. On 25 May, the Clara Elizabeth Ramírez urban unit of FPL executed Marine Colonel Albert Schaufelberger, the second-ranking officer among the 55 United States military advisers in El Salvador. 63/

On 6 April, Mélida Amaya Montes (Commander Ana María), the second in command of FPL, was murdered in Managua. A few days later, on learning that a close collaborator of his had committed the crime, Salvador Cayetano Carpio, founder and leader of the majority faction of FMLN, committed suicide.

In 1983, the death squads continued operating; a high proportion of those murdered were leaders of the political opposition, trade union leaders, educators and church officials. According to a State Department briefing, death squad activities picked up again in May, and they became very active in October and November, primarily as a result of the continuing, though limited, dialogue between the Peace Commission and the left. 64/

On 1 November, the Brigada Anticomunista Maximiliano Hernández Martínez issued a death threat to Bishops Rivera y Damas and Rosas Chávez, warning them "to desist immediately from their disruptive sermons". In his farewell message, Ambassador Hinton referred to this event saying that he had never been able to understand the private sector's silence with regard to the activities of the death squads. 65/

On 4 November, the new Ambassador, Thomas Pickering, referred to the pressure being put on the Government of El Salvador to take action against the leaders of the death squads, mentioning, inter alia, Héctor Regalado, Chief of Security of the Constituent Assembly; Major José Ricardo Pozo, Chief of Intelligence of the Treasury Police; Lieutenant Colonel Arístides Alfonso Márquez, Chief of Intelligence of the National Police and Colonels Denis Morán, Elmer Araujo González and Miguel Alfredo Vasconcelos. 66/

The most important event in this respect was the visit by the Vice-President of the United States, George Bush, to San Salvador on 9 December. Bush took the opportunity to state publicly that the death squads must disappear because they constituted a threat to the political stability of the Government. Later on he handed the Government a list of civilian and military personnel suspected of belonging to those clandestine organizations. 67/ From that time on there was a significant decrease in the activities of the squads and several government bodies announced that they planned to conduct investigations into the matter. 68/

On 25 December, Monsignor Gregorio Rosas Chávez reported that 6,096 Salvadorians had died in 1983 as a result of political violence. The number of people killed by the army and the death squads was 4,700; the number of army and security forces personnel killed was 1,300. 69/

In the interior of the country, the number of displaced persons climbed to 400,000; this, added to the approximately 500,000 Salvadorians which UNHCR estimated to be in the United States and the 200,000 in Mexico and Central America, represented 20 per cent of the country's total population. 70/

In his annual report, the Special Representative of the United Nations Commission on Human Rights, José Antonio Pastor Ridruejo, said:

> "... the number of civilians murdered for political reasons in El Salvador continues to be very high. This is, unfortunately, the feature of the human rights situation ... which causes the greatest concern." 71/

The Commission on the Truth received direct testimony concerning 513 victims of serious acts of violence occurring in 1983.

1984

PDC placed first in the March 1984 elections, with 43.41 per cent of the vote, followed by ARENA, with 29.76 per cent, and PCN, with 20 per cent. Since no party had obtained an absolute majority, a second round of balloting was held on 6 May between the two parties that placed highest. José Napoleón Duarte won 53.6 per cent and the ARENA candidate, Roberto D'Aubuisson, won 46.4 per cent. Duarte took office on 1 June and became the first civilian to be elected President in 50 years.

The trial of the members of the National Guard accused of murdering the American churchwomen in December 1980 was held during the interval between the elections and the time Duarte took office. The Government and institutions of the United States brought strong pressure to bear on the proceedings, for the United States Congress was considering emergency assistance to El Salvador. On 23 May, after finding them guilty, Judge Bernardo Rauda Murcia sentenced the five members of the National Guard to 30 years in prison. 72/

In October, President Duarte invited FMLN to talks. The meeting took place in La Palma, Chalatenango, on 15 October and was followed by a further meeting on 30 November in Ayagualo, La Libertad. Neither meeting was a success because of the positions taken regarding the conditions of a possible incorporation of FMLN into political life. 73/

As the war proceeded there was a decrease in the number of political murders but, at the same time, acts of war increased, as manifested by countless confrontations, acts of economic sabotage 74/ and massive counter-insurgency operations by the military in conflict zones. 75/

On 23 October, the Ejército Revolucionario del Pueblo (ERP) tricked Colonel Domingo Monterosa, Commander of the Third Infantry Brigade, into locating and seizing what was thought to be the Radio Venceremos transmission

centre. An explosive device which had been planted in the transmitter exploded while the unit was being transported by helicopter. The Colonel and those accompanying him were killed.

Despite indiscriminate and disproportionate attacks on the civilian population, the number of air attacks on the population dropped. At the same time, there was a marked decrease in the activities of death squads during the first months of the year. 76/ In April, however, Legal Protection reported that murders by death squads were on the increase again, following a two-month lull. 77/

In a document issued in September, Legal Aid reported that, during the first eight months of 1984, the number of civilian deaths attributed to the army, security forces and death squads came to 1,965. In his annual report, the Special Representative of the United Nations Commission on Human Rights stated that "... the persistence of civilian deaths in or as a result of combat weakens the favourable impression created by a decline in the number of political murders in non-combat situations." 78/

The Commission on the Truth received direct testimony concerning 290 victims of serious acts of violence occurring in 1984.

1985

Elections for the Legislative Assembly and the municipalities were held on 31 March and the Christian Democrats won. The loss of relative political control by ARENA led to a process of internal realignments which culminated, on 29 September, in the election of Alfredo Cristiani as President of the National Executive Committee of that party.

In the course of the year, the dialogue process remained at a standstill, because of the non-acceptance of the proposal that talks should continue without publicity so that the peacemaking effort might progress.

There was a marked stepping up of violence in military confrontations and operations in the areas where guerrillas were active. At the same time, FMLN had been carrying out a series of abductions and summary executions. 79/ The action having the greatest consequences was the attack carried out on 19 June, on a restaurant in the Zona Rosa in San Salvador, by the Partido Revolucionario de Trabajadores Centroamericanos (PRTC). Four United States Marines from the United States Embassy were killed in the attack, together with nine civilians (see this case in chap. IV).

During 1985, FMLN carried out a series of abductions of mayors and municipal officials and, by September, 20 mayors had been abducted. The army captured Nidia Díaz, Commander of PRTC, in combat and Commander Miguel Castellanos deserted (see the case in chap. IV).

FMLN abducted President Duarte's daughter. 80/ Following several weeks of negotiation with the mediation of the church and foreign Governments, FMLN exchanged Inés Guadalupe Duarte and 22 mayors for Nidia Díaz and a group of 21 leaders; 101 war-wounded FMLN combatants left the country.

FMLN began to make widespread tactical use of mines in areas under its influence. As a result of this practice, a great many civilians were killed or maimed. Legal Protection put the number of persons killed by mines in 1985 at 31 and the Human Rights Commission of El Salvador (governmental) reported 46 people killed and 100 injured as a result of contact mines. 81/

No large-scale collective executions were carried out during the numerous military counter-insurgency operations. However, there were intensive aerial bombings and mass displacement of the peasant population in rural areas. 82/ Christian Legal Aid put the number of civilian non-combatant deaths attributable to government forces at 1,655. 83/ Legal Protection put the number of dead at 371. 84/

Death squad activity continued in 1985. Legal Protection cited 136 murders by death squads, as against 39 during the latter half of 1984. At the same time the Ejército Secreto Anticomunista (ESA) issued death threats to 11 members of the University of El Salvador and 9 of those threatened went into exile. Major D'Aubuisson, commenting on the squads, pointed out that they "had been operating in El Salvador since 1969, when the terrorist groups of the Communist Party were formed". 85/

Different sources cited different figures for the number of persons injured and killed as a result of the fighting. The actual number was probably around 2,000. 86/

The Commission on the Truth received testimony concerning 141 victims of acts of serious violence occurring in 1985.

1986

The process of political dialogue on resolving the conflict remained deadlocked because of the radicalization of the parties. The war had a negative impact on production, and the process of recovery was slow. President Duarte adopted a programme of stabilization and reactivation of the economy; at the same time protests increased and the crisis deepened.

The Unión Nacional de los Trabajadores Salvadoreños (UNTS) and the Unión Nacional Obrero-Campesina (UNOC) began to act, organizing protests and popular demonstrations. They put forward economic demands and called for a dialogue between the Government and FMLN-FDR. UNTS and the Federación de Estudiantes Universitarios (FEUS), as well as other organizations, held three major protest demonstrations. In January, so-called "Operation Phoenix" began with the objective of regaining the Guazapa area from FMLN control. This operation continued throughout the year.

Vast numbers of people were displaced from their places of origin when they fled the counter-insurgency operations. Those affected established the Coordinadora Nacional de la Repoblación (CNR), which sought to regain the right of the civilian population to live in the areas from which they had come. These resettlement movements had the backing of the Church.

President Napoleón Duarte proposed a new peace plan which FMLN rejected because the Salvadorian guerrilla movement refused to be compared to the Nicaraguan rebels. 87/ Throughout the year, President Duarte pressed for the convening of talks and the international community did likewise, in an effort to bring peace to the region. In June, after a second attempt to sign the Central American peace agreement failed, 13 Latin American nations made one final attempt to save the Contadora peace process. 88/ In September, President Duarte again proposed talks with FMLN-FDR in Sesori, San Miguel, but the guerrillas did not attend.

The violence continued. The counter-insurgency operations and repressive measures of the State security forces produced casualties as did abductions, summary executions, attacks on mayors' offices and the laying of mines by FMLN. The activity of the death squads continued and the Ejército Salvadoreño de Salvación was born. In October, an earthquake in San Salvador caused hundreds of casualties and considerable property damage. A state of emergency was declared.

The Commission on the Truth received testimony concerning a total of 155 victims of serious acts of violence occurring in 1986.

III. 1987-1989: THE MILITARY CONFLICT AS AN OBSTACLE TO PEACE

The Esquipulas II Agreement 89/ signed by President Duarte provided a political opportunity for leaders of FDR to come back at the end of 1987. They participated as a coalition in the 1989 presidential elections.

Although progress was made in what the international community termed "the humanization of the conflict", 90/ there was a resurgence of violence, with a definite increase in attacks on the labour movement, human rights groups and social organizations. FMLN carried out a campaign of abductions, summary executions and murders against civilians affiliated with or sympathetic to the Government and the armed forces. The dialogue among the parties came to a standstill and it became clear that human rights violations were being fostered by institutional shortcomings, complicity or negligence and that they were the main obstacles to the peace process.

1987

Protests against tax measures and electoral reforms became more widespread, as did workers' demonstrations and violence against leaders of the cooperative movement. 91/ In August 1987, the five Central American Presidents meeting in Guatemala signed the Esquipulas II Agreement, which called for the establishment of national reconciliation commissions in each country, an International Verification Commission and amnesty legislation. The Papal Nuncio, for his part, offered to host meetings between the Government and FMLN-FDR, with Archbishop Rivera y Damas acting as moderator. The parties publicly endorsed the Esquipulas II Agreement and announced the establishment of commissions to deal with the cease-fire and other areas covered by the Agreement.

The Legislative Assembly adopted Legislative Decree No. 805, entitled "Amnesty Act aimed at achieving National Reconciliation". 92/ The Special Representative for El Salvador of the United Nations Commission on Human Rights 93/ and such human rights organizations as Americas Watch criticized the scope of the amnesty. 94/ In fact, Christian Legal Aid went so far as to bring an action challenging the constitutionality of the article which extended the benefit of amnesty to all kinds of offences. 95/

Moreover, the coordinator of the Salvadorian Human Rights Commission (non-governmental), Herbert Anaya Sanabria, was murdered. The incident caused great outrage in the country. 96/ The United Nations Special Representative, José Antonio Pastor Ridruejo, reported more humanitarian patterns of conduct in the armed forces compared with the previous year. He also noted that he had not received any reports of mass murders attributed to the armed forces or of the use of torture. 97/ The Special Representative concluded by assigning responsibility to the guerrillas for most of the civilian deaths or injuries caused by the explosion of contact mines. He also referred to the forcible recruitment of minors by the guerrilla forces. 98/ Overall, however, there was a decline in the number of victims compared with 1986.

General Adolfo Blandón, Chief of the Armed Forces Joint Staff, presented his annual balance sheet, which stated that 75 per cent of the armed forces, estimated at over 50,000 men, had taken part in a total of 132 military operations. Government forces had suffered 3,285 casualties: 470 dead and 2,815 wounded, 90 per cent of whom had returned to active duty. Rebel casualties totalled 2,586: 1,004 dead, 670 wounded, 847 taken prisoner and 65 deserters. 99/

The Commission on the Truth received testimony concerning a total of 136 victims of serious acts of violence occurring in 1987.

1988

The elections for the National Assembly and municipal councils resulted in a majority for ARENA. FMLN attempted to boycott the elections with transport stoppages, kidnappings and murders, and by car-bombings. The Supreme Court, in application of the Amnesty Act, exonerated the officers and alleged perpetrators of the Las Hojas massacre, as well as those implicated in the murder of the American agrarian reform advisers and the Director of ISTA. 100/

The army reverted to the practice of mass executions, the most serious having occurred in the district of San Sebastián, San Vicente, where 10 peasants were killed (see reference to the case in chap. IV). Furthermore, the number of those killed by the death squads was three times higher than in 1987, averaging eight victims a month. 101/

FMLN began to target as military objectives municipal officials and suspected army informers. Thus, the guerrillas killed eight mayors (see reference to the case in chap. IV) and threatened to execute a similar number of informers. 102/ More than 150 people are estimated to have been killed by mines in 1988.

The Commission on the Truth received testimony concerning 138 victims of serious acts of violence occurring in 1988.

IV. 1989-1991: FROM THE "FINAL OFFENSIVE" TO THE SIGNING OF THE PEACE AGREEMENTS

At 8 p.m. on Saturday, 11 November 1989, FMLN launched the biggest offensive of the war just a few days after the bombing of FENASTRAS headquarters. The impact of the offensive on the capital and other cities led the Government to decree a state of emergency. Beginning on 13 November, a 6 p.m. to 6 a.m. curfew went into effect. 103/ The fighting that raged up to 12 December cost the lives of over 2,000 from both sides and caused material damage amounting to approximately 6 billion colones. 104/

The 1989 offensive was one of the most violent episodes of the war. The guerrilla forces took cover in densely populated areas during the skirmishes and urban areas were the targets of indiscriminate aerial bombardment. The critical situation in the country bred such violations as the arrest, torture, murder and disappearance of hundreds of non-combatant civilians. It was against this backdrop that the Jesuit priests and two women were murdered.

The parties realized that a decisive military victory was not within their grasp and resumed in greater earnest the negotiating process which led to the signing of the peace agreements.

Security Council resolution 637 (27 July 1989) endorsed the use of the good offices of the United Nations Secretary-General. The United Nations became a direct participant, mediating between the parties, until the ultimate signing of the agreements. The United Nations Secretary-General and his representatives intervened at crucial moments to keep one or the other of the parties from leaving the negotiating table.

The Geneva Agreement (April 1990), witnessed by the Secretary-General, marked the beginning of an irreversible embracing process drawing up an agenda and timetable (Caracas Agenda, 21 May 1990); human rights (San José Agreement, 26 July 1990); reforms in the army and the judicial and electoral systems and the establishment of the Commission on the Truth (Mexico Agreements, 27 April 1991), and finally the Chapultepec Agreement, the starting-point for the cessation of hostilities, disarmament and the implementation of the agreed institutional reforms.

1989

Two contradictory trends characterized Salvadorian society in 1989. On the one hand, acts of violence became more common, as did complaints of human rights violations, while on the other, talks between representatives of the Government of El Salvador and members of the FMLN leadership went forward with a view to achieving a negotiated and political settlement of the conflict. 105/

In the presidential elections, Alfredo Cristiani, 106/ the ARENA candidate, was elected while FMLN called for a boycott of the elections and a transport stoppage during election week. A number of incidents occurred in university

centres. 107/ Systematic intimidation and threats against pastoral workers of various churches and social workers of different church institutions continued. 108/

FMLN continued its policy of "ajusticiamientos" (summary executions) and threats against mayors, forcing them to leave office; one third of the territory of El Salvador was affected. 109/ In addition, the number of politically motivated murders increased, most of them attributed to the rebels. The cases which caused the most outrage were the murder of former guerrilla commander Miguel Castellanos (17 February) (see chap. IV); the execution of Mr. Francisco Peccorini Letona; the murder of the Attorney General of the Republic, Roberto García Alvarado; the murder of José Antonio Rodríguez Porth, who only days before had assumed the post of the President's Chief of Staff, together with his chauffeur and another person with him. Mr. Rodríguez Porth, who was 74 years of age, was wounded by several gun shots in front of his house and died a few days later in the hospital. In addition there was the murder of conservative ideologue Edgard Chacón; the execution of Gabriel Eugenio Payes Interiano 110/ and the death of prominent politician Francisco José Guerrero, former President of the Supreme Court, on 24 November in an operation which the Government claimed was carried out by the urban commandos of FMLN (see chap. IV).

Progress was made in the dialogue between FMLN and the Salvadorian Government. 111/ The talks continued in Mexico City from 13 to 15 September, in San José, Costa Rica, beginning on 16 October and in Caracas a month later. Observers from the Catholic Church of El Salvador, the United Nations and the Organization of American States were present.

Following the bombing of the offices of the Federación Nacional Sindical de Trabajadores Salvadoeñes (FENASTRAS) 112/ (see chap. IV), FMLN suspended talks with the Government.

On 16 November 1989 army units murdered the Jesuit priests of the Central American University (UCA): Ignacio Ellacuría, Rector of the University, Segundo Montes, Ignacio Martín-Baró, Armando López, Juan Ramón Moreno and Joaquín López, together with housekeeper Elba Ramos and her 15-year-old daughter, Celina Ramos (see chap. IV).

Colonel René Emilio Ponce, Chief of the Armed Forces Joint Staff, reported that the body count was 446 soldiers dead and 1,228 wounded, and 1,902 guerrillas killed and 1,109 wounded. 113/

The Commission on the Truth received direct testimony concerning 292 victims of serious acts of violence occurring in 1989.

1990

In 1990, negotiations proceeded and made real progress, while at the same time the war continued. Héctor Oquelí Colindres (see chap. IV.), leader of the Movimiento Nacional Revolucionario (MNR) 114/ was abducted and killed in Guatemala. Former President José Napoleón Duarte died and FMLN marked the occasion by proclaiming a unilateral cease-fire on the 24th and 25th.

According to the Annual Report of the Inter-American Commission on Human Rights 1990-1991, 119 people, 53 of whom were executed by death squads and 42 by the army, died as a result of political murders attributable to military or paramilitary groups. FMLN executed 21 persons, 14 of those executions being considered political murders. 115/

There were fewer civilian deaths than in 1989. The numbers dropped sharply after the signing of the San José Agreement on Human Rights on 26 July 1990. The army's military operations accounted for 852 victims, but it is not known how many were FMLN combatants and how many were civilians. 116/

In his report on the human rights situation for 1990, the Special Representative of the United Nations shared the concern of the Commission on Human Rights about the alarming frequency with which members of civil defence units had been involved in serious acts of murder, robbery, assault, rape and abuse of authority, keeping the population in a permanent state of fear and insecurity. 117/

The delegations of the Government and the Frente Farabundo Martí para la Liberación Nacional met in Geneva and agreed to resume talks. On 20 May 1990, the parties signed an agreement in Caracas which contained the agenda for the negotiations aimed at ending the conflict and established a definite timetable. 118/ The parties continued to meet on 19 June in Oaxtepec, Mexico, to discuss demilitarization and military impunity. The round of talks concluded without producing any agreement. As part of the process, what was regarded as the first substantive agreement, dealing with respect for human rights, was signed on 26 July, which has come to be known as the San José Agreement. Both parties undertook to respect the most fundamental rights of the human person and to institute a procedure for international verification by a United Nations mission.

In August, there was another round of talks to discuss the armed forces that ended once again without agreement. The deadlock in the talks led the United Nations Secretary-General to announce on 31 October that henceforth the negotiations would be held in secret.

Towards the middle of November, FMLN stepped up its military operations in various areas as a means of exerting military pressure to get the stalled negotiating process moving again. The international community responded with appeals to FMLN to desist from those operations. 119/

The Commission on the Truth received direct testimony concerning 107 victims of serious acts of violence occurring in 1990.

1991

The negotiating process between the Government of El Salvador and FMLN went forward during 1991. At the same time, the parties were faulted for serious acts of violence. On 2 January, in San Miguel, FMLN forces shot down a helicopter manned by three American advisers and executed the two survivors (see chap. IV). On 21 January, persons in uniform in El Zapote executed 15 members of a family. 120/ On 28 February, Mr. Guillermo Manuel Ungo died after a long

illness. The same day, FMLN announced that it would not, as it had in the past, boycott the March elections. On 10 March, 53 per cent of registered voters took part in the general legislative and municipal elections held in El Salvador. 121/

The process of dialogue advanced with two rounds of negotiations: one in Mexico from 3 to 6 January and the other in San José from 19 to 21 February, yielding no concrete results. Meanwhile, the level of violence of the war intensified throughout the country. 122/

On 4 April, Mexico City played host to the representatives of the Government and FMLN for the eighth round of negotiations, which went on until 27 April. Significant agreements were reached involving constitutional reforms affecting such aspects as the armed forces and the judicial and electoral systems, which were adopted by the Legislative Assembly on 29 April. It was in these Agreements that the parties decided to establish the Commission on the Truth. 123/

On 26 July, with the prior and full support of the United Nations Security Council resolution 693 (1991) and of the Legislative Assembly of El Salvador, the United Nations Observer Mission in El Salvador (ONUSAL) was launched and its Human Rights Division immediately became operational. The United Nations Secretary-General invited the parties to meet with him in New York. On 25 September they concluded the agreement known as the New York Act, which established the National Commission for the Consolidation of Peace (COPAZ). A process of purification and reduction of the armed forces was set in motion, the parties undertook to redefine the doctrine for the armed forces and confirmed the applicability of the Mexico Agreements of 27 April 1991. Furthermore, several economic and social agreements were concluded and an agenda was drawn up for negotiations on all outstanding issues.

The signing of the El Salvador Peace Agreement at Chapultepec, Mexico, on 16 January 1992, marked the culmination of the negotiating process and the beginning of the implementation phase of the agreements. It was also specifically agreed at Chapultepec to link the work of the Commission on the Truth with the clarification and ending of impunity. 124/

For the first six months of 1991, the Commission on the Truth received testimony concerning 28 victims of serious acts of violence.

The signing of the Peace Agreement in Chapultepec put an end to 12 years of armed conflict in El Salvador and the events mentioned in this brief chronology are only part of the tragic events of El Salvador's recent history. The Chapultepec Peace Agreement should also be the beginning of a new period that augurs a promising future for this Central American nation through national reconciliation.

IV. CASES AND PATTERNS OF VIOLENCE 125/

A. GENERAL OVERVIEW OF CASES AND PATTERNS OF VIOLENCE

The Commission on the Truth registered more than 22,000 complaints of serious acts of violence that occurred in El Salvador between January 1980 and July 1991. 126/ Over 7,000 were received directly at the Commission's offices in various locations. The remainder were received through governmental and non-governmental institutions. 127/

Over 60 per cent of all complaints concerned extrajudicial executions, over 25 per cent concerned enforced disappearances, and over 20 per cent included complaints of torture.

Those giving testimony attributed almost 85 per cent of cases to agents of the State, paramilitary groups allied to them, and the death squads.

Armed forces personnel were accused in almost 60 per cent of complaints, members of the security forces in approximately 25 per cent, members of military escorts and civil defence units in approximately 20 per cent, and members of the death squads in more than 10 per cent of cases. The complaints registered accused FMLN in approximately 5 per cent of cases.

Despite their large number, these complaints do not cover every act of violence. The Commission was able to receive only a significant sample in its three months of gathering testimony.

This also does not mean that each act occurred as described in the testimony. The Commission investigated certain specific cases in particular circumstances, as well as overall patterns of violence. Some 30 of the cases dealt with in the report are illustrative of patterns of violence, in other words, involve systematic practices attested to by thousands of complainants.

Both the specific cases and the patterns of violence show that, during the 1980s, the country experienced an unusually high level of political violence. All Salvadorians without exception, albeit to differing degrees, suffered from this violence.

The introduction to the report and the section on methodology contain an explanation of this phenomenon.

Patterns of violence by agents of the State and their collaborators

All the complaints indicate that this violence originated in a political mind-set that viewed political opponents as subversives and enemies. Anyone who expressed views that differed from the Government line ran the risk of being eliminated as if they were armed enemies on the field of battle. This situation is epitomized by the extrajudicial executions, enforced disappearances and murders of political opponents described in this chapter.

Any organization in a position to promote opposing ideas that questioned official policy was automatically labelled as working for the guerrillas. To belong to such an organization meant being branded a subversive.

Counter-insurgency policy found its most extreme expression in a general practice of "cutting the guerrillas' lifeline". The inhabitants of areas where the guerrillas were active were automatically suspected of belonging to the guerrilla movement or collaborating with it and thus ran the risk of being eliminated. El Mozote is a deplorable example of this practice, which persisted for some years.

In the early years of the decade, the violence in rural areas was indiscriminate in the extreme.

Roughly 50 per cent of all the complaints analysed concern incidents which took place during the first two years, 1980 and 1981; more than 20 per cent took place in the following two years, 1982 and 1983. In other words, over 75 per cent of the serious acts of violence reported to the Commission on the Truth took place during first four years of the decade.

The violence was less indiscriminate in urban areas, and also in rural areas after 1983 (95 per cent of complaints concerned incidents in rural areas and 5 per cent concerned incidents in more urban areas).

Patterns of FMLN violence

The Commission registered more than 800 complaints of serious acts of violence attributed to FMLN. This violence occurred mainly in conflict zones, over which FMLN at times maintained firm military control.

Nearly half the complaints against FMLN concern deaths, mostly extrajudicial executions. The rest concern enforced disappearances and forcible recruitment.

The patterns show that this violence began with the armed conflict. It was considered legitimate to physically eliminate people who were labelled military targets, traitors or "orejas" (informers), and even political opponents. The murders of mayors, right-wing intellectuals, public officials and judges are examples of this mentality.

Members of a given guerrilla organization would investigate the activities of the person who might be designated a military target, a spy or a traitor; they would then make an evaluation and take a collective decision to execute that person; special groups or commandoes would plan the action and the execution would then be carried out. After the extrajudicial execution, the corresponding organization would publicly claim responsibility for propaganda purposes. FMLN called such executions "ajusticiamientos".

These executions were carried out without due process. The case of Romero García, alias Miguel Castellanos, in 1989 is typical of extrajudicial executions ordered by FMLN because the victims were considered traitors. He was not given a trial. After a time, FMLN claimed responsibility for having ordered the killing. It never revealed which organization had carried out the execution.

The killings of mayors and the murder of United States military personnel in the Zona Rosa were carried out in response to orders or general directives issued by the FMLN Command to its organizations.

In the Zona Rosa case in 1985, the execution of Mr. Peccorini in 1989, and the execution of Mr. García Alvarado that same year, different member organizations of FMLN interpreted general policy directives restrictively and applied them sporadically, thereby triggering an upsurge in the violence.

In the case of executions of mayors, on the other hand, instructions from the FMLN General Command were interpreted broadly and applied extensively. During the period 1985-1989, the Ejército Revolucionario del Pueblo repeatedly carried out extrajudicial executions of non-combatant civilians. There is no concept under international humanitarian law whereby such people could have been considered military targets.

The Commission was not able to verify the existence of general directives from the FMLN leadership to its constituent organizations authorizing enforced disappearances. It did receive complaints of some 300 cases of disappearance, which occurred mainly in areas where FMLN exercised greater military control. It was not possible to establish the existence of any pattern from an analysis of these complaints. Nevertheless, links were observed between disappearances, forcible recruitment by FMLN and cases of extrajudicial execution by FMLN members of individuals labelled spies or traitors.

The extrajudicial execution of the United States military personnel who survived the attack on their helicopter in San Miguel in 1991 cannot be viewed as the norm. FMLN admitted that some of its members had been responsible, and stated publicly that it had been a mistake. However, there is no record that those who carried out the execution were actually punished.

Lastly, although the number of complaints of the alleged use of land-mines by guerrilla forces was small, the Commission considered accusations made by various organizations against FMLN to that effect. Members of FMLN admitted to the Commission that they had laid mines with little or no supervision, so much so that civilians and their own members who were not sufficiently familiar with the location of minefields had been affected. The Commission did not find any other evidence on this subject.

B. VIOLENCE AGAINST OPPONENTS BY AGENTS OF THE STATE

1. ILLUSTRATIVE CASE: THE MURDERS OF THE JESUIT PRIESTS

SUMMARY OF THE CASE

In the early hours on 16 November 1989, six Jesuit priests, a cook and her 16-year-old daughter were shot and killed at the Pastoral Centre of José Simeón Cañas Central American University (UCA) in San Salvador. The victims were Fathers Ignacio Ellacuría, Rector of the University; Ignacio Martín-Baró, Vice-Rector; Segundo Montes, Director of the Human Rights Institute; Amando López, Joaquín López y López and Juan Ramón Moreno, all teachers at UCA; and Julia Elba Ramos and her daughter, Celina Mariceth Ramos.

Criminal proceedings were subsequently brought against members of the armed forces for the murders; they included Colonel Guillermo Alfredo Benavides Moreno, Director of the Military College, accused of having given the order to murder the priests; Lieutenant Yusshy René Mendoza Vallecillos, an officer of the Military College, and Lieutenants José Ricardo Espinoza Guerra and Gonzalo Guevara Cerritos, officers of the Atlacatl Battalion, all of them accused of commanding the operation; and five soldiers of the Atlacatl Battalion, accused of committing the murders.

In 1991, a jury found Colonel Benavides guilty of all the murders and Lieutenant Mendoza Vallecillos guilty of the murder of the young girl, Celina Mariceth Ramos. The judge imposed the maximum sentence, 30 years in prison, which they are currently serving. The judge also found Colonel Benavides and Lieutenant Mendoza guilty of instigation and conspiracy to commit acts of terrorism. Lieutenants Espinoza and Guevara Cerritos were sentenced to three years for instigation and conspiracy to commit acts of terrorism. Lieutenant Colonel Hernández was convicted by the judge of being an accessory, as was Mendoza Vallecillos. All, except for Colonel Benavides and Lieutenant Mendoza, were released on bail and remained in the armed forces.

The Commission on the Truth makes the following findings and recommendations:

1. On the night of 15 November 1989, then Colonel René Emilio Ponce, in the presence of an in collusion with General Juan Rafael Bustillo, then Colonel Juan Orlando Zepeda, Colonel Inocente Orlando Montano and Colonel Francisco Elena Fuentes, gave Colonel Guillermo Alfredo Benavides the order to kill Father Ignacio Ellacuría and to leave no witnesses. For that purpose, Colonel Benavides was given the use of a unit from the Atlacatl Battalion, which had been sent to search the priests' residence two days previously.

2. Subsequently, all these officers and others, including General Gilberto Rubio Rubio, knowing what had happened, took steps to conceal the truth.

3. That same night, Colonel Guillermo Alfredo Benavides informed the officers at the Military College of the order for the murder. When he asked whether anyone had any objection, they all remained silent.

4. The operation was organized by then Major Carlos Camilo Hernández Barahona and carried out by a group of soldiers from the Atlacatl Battalion under the command of Lieutenant José Ricardo Espinoza Guerra and Second Lieutenant Gonzalo Guevara Cerritos, accompanied by Lieutenant Yusshy René Mendoza Vallecillos.

5. Colonel Oscar Alberto León Linares, Commander of the Atlacatl Battalion, knew of the murder and concealed incriminating evidence.

6. Colonel Manuel Antonio Rivas Mejía, Head of the Commission for the Investigation of Criminal Acts (CIHD), learnt the facts and concealed the truth;

he also recommended to Colonel Benavides measures for the destruction of incriminating evidence.

7. Colonel Nelson Iván López y López, who was assigned to assist in the CIHD investigation, learnt what had happened and concealed the truth.

8. Rodolfo Antonio Parker Soto, a lawyer and member of the Special Honour Commission, altered statements in order to conceal the responsibility of senior officers for the murder.

9. The Commission believes that it is unfair that Colonel Guillermo Alfredo Benavides Moreno and Lieutenant Yusshy René Mendoza Vallecillos should still be in prison when the people responsible for planning the murders and the person who gave the order remain at liberty. In the Commission's view, the request by the Society of Jesus that Colonel Guillermo Alfredo Benavides Moreno and Lieutenant Yusshy René Mendoza Vallecillos be pardoned should be granted by the relevant authorities.

DESCRIPTION OF THE FACTS 128/

In the early hours of 16 November 1989, a group of soldiers from the Atlacatl Battalion entered the campus of José Simeón Cañas Central American University (UCA) in San Salvador. They made their way to the Pastoral Centre, which was the residence of Jesuit priests Ignacio Ellacuría, Rector of the University; Ignacio Martín-Baró, Vice-Rector; Segundo Montes, Director of the Human Rights Institute; and Amando López, Joaquín López y López and Juan Ramón Moreno, all teachers at UCA.

The soldiers tried to force their way into the Pastoral Centre. When the priests realized what was happening, they let the soldiers in voluntarily. The soldiers searched the building and ordered the priests to go out into the back garden and lie face down on the ground.

The lieutenant in command, José Ricardo Espinoza Guerra, gave the order to kill the priests. Fathers Ellacuría, Martín-Baró and Montes were shot and killed by Private Oscar Mariano Amaya Grimaldi, Fathers López and Moreno by Deputy Sergeant Antonio Ramiro Avalos Vargas. Shortly afterwards, the soldiers, including Corporal Angel Pérez Vásquez, found Father Joaquín López y López inside the residence and killed him. Deputy Sergeant Tomás Zarpate Castillo shot Julia Elva Ramos, who was working in the residence, and her 16-year-old daughter, Celina Mariceth Ramos. Private José Alberto Sierra Ascencio shot them again, finishing them off.

The soldiers took a small suitcase belonging to the priests, with photographs, documents and $5,000.

They fired a machine gun at the façade of the residence and launched rockets and grenades. Before leaving, they wrote on a piece of cardboard: "FMLN executed those who informed on it. Victory or death, FMLN."

Preceding events

A few hours earlier, on 15 November between 10 p.m. and 11 p.m., Colonel Guillermo Alfredo Benavides Moreno, Director of the Military College, met with the officers under his command. The officers present included Major Carlos Camilo Hernández Barahona, Captain José Fuentes Rodas, Lieutenants Mario Arévalo Meléndez, Nelson Alberto Barra Zamora, Francisco Mónico Gallardo Mata, José Vicente Hernández Ayala, Ramón Eduardo López Larios, René Roberto López Morales, Yusshy René Mendoza Vallecillos, Edgar Santiago Martínez Marroquín and Second Lieutenant Juan de Jesús Guzmán Morales.

Colonel Benavides told them that he had just come from a meeting at the General Staff at which special measures had been adopted to combat FMLN offensive, which had begun on 11 November. Those present at the meeting had been informed that the situation was critical and it had been decided that artillery and armoured vehicles should be used.

Those present at the meeting had also been informed that all known subversive elements must be eliminated. Colonel Benavides said that he had received orders to eliminate Father Ignacio Ellacuría and to leave no witnesses.

Colonel Benavides asked any officers who objected to the order to raise their hands. No one did.

Major Hernández Barahona organized the operation. Troops from the Atlacatl Battalion were used, under the command of Lieutenant José Ricardo Espinoza Guerra. In order to overcome any reluctance on his part, it was arranged that Lieutenant Yusshy René Mendoza Vallecillos, who had graduated from officer training school in the same class ("tanda") as him, would also participate.

After the meeting, Major Hernández Barahona met with Lieutenant Mendoza Vallecillos, Lieutenant Espinoza Guerra and Second Lieutenant Gonzalo Guevara Cerritos of the Atlacatl Battalion. In order to pin responsibility for the deaths on FMLN, they decided not to use regulation firearms and to leave no witnesses. After the murders, they would simulate an attack and leave a sign mentioning FMLN.

It was decided to use an AK-47 rifle belonging to Major Hernández Barahona, because the weapon had been captured from FMLN and was identifiable. The rifle was entrusted to Private Mariano Amaya Grimaldi, who knew how to use it.

In order to reach UCA, it was necessary to pass through the defence cordons of the military complex. Lieutenant Martínez Marroquín arranged for the Atlacatl soldiers to pass.

Lieutenants Espinoza Guerra and Mendoza Vallecillos and Second Lieutenant Guevara Cerritos left the Military College in two pick-up trucks with the soldiers from the Atlacatl Battalion. They went to some empty buildings which are close to the UCA campus, where other soldiers of the Atlacatl Battalion were waiting. There, Lieutenant Espinoza indicated who would keep watch and who would enter the Jesuits' residence.

Background

Members of the armed forces used to call UCA a "refuge of subversives". Colonel Juan Orlando Zepeda, Vice-Minister for Defence, publicly accused UCA of being the centre of operations where FMLN terrorist strategy was planned. Colonel Inocente Montano, Vice-Minister for Public Security, stated publicly that the Jesuits were fully identified with subversive movements.

Father Ellacuría had played an important role in the search for a negotiated, peaceful solution to the armed conflict. Sectors of the armed forces identified the Jesuit priests with FMLN because of the priests' special concern for those sectors of Salvadorian society who were poorest and most affected by the war.

On two earlier occasions that same year, 1989, bombs had gone off at the University printing house.

The offensive

The offensive launched by FMLN on 11 November reached proportions that the armed forces had not expected and which alarmed them. The guerrillas gained control of various areas in and around San Salvador. They attacked the official and private residences of the President of the Republic and the residence of the President of the Legislative Assembly. They also attacked the barracks of the First, Third and Sixth Infantry Brigades and those of the National Police. On 12 November, the Government declared a state of emergency and imposed a 6 p.m. to 6 a.m. curfew.

At a meeting of the General Staff on 13 November, security commands were created to deal with the offensive. Each command was headed by an officer under the operational control of Colonel René Emilio Ponce, Chief of the Armed Forces Joint Staff. Colonel Benavides Moreno was designated to head the military complex security command, a zone which included the Military College, the Ministry of Defence, the Joint Staff, the National Intelligence Department (DNI), the Arce and Palermo districts (most of whose residents were members of the armed forces), the residence of the United States Ambassador and the UCA campus.

A national radio channel was also established, the pilot station being Radio Cuscatlán of the armed forces. Telephone calls to the station were broadcast in a "phone-in" in which callers levelled accusations at Father Ellacuría and went so far as to call for his death.

On 11 November, guerrillas blew up one of the main gates of the University and crossed the University campus. The next day, a military detachment was stationed to watch who went in and out of the University. From 13 November onwards no one was permitted onto the campus.

On 13 November, Colonel Ponce ordered Colonel Joaquín Arnoldo Cerna Flores, head of unit III of the General Staff, to arrange for a search of UCA premises. According to Colonel Ponce, he ordered the search because he had been informed that there were over 200 guerrillas inside the University.

Colonel Cerna Flores entrusted the search to Lieutenant José Ricardo Espinoza Guerra, who took some 100 men from the Atlacatl Battalion. Lieutenant Héctor Ulises Cuenca Ocampo of the National Intelligence Department (DNI) joined the troops at the entrance to UCA to assist with the search. Lieutenant Espinoza Guerra personally directed the search of the Jesuits' residence. They found no signs of any guerrilla presence, war matériel or propaganda.

On completing the search, Lieutenant Espinoza Guerra reported to Major Hernández Barahona. He then went to the General Staff where he reported to Colonel Cerna Flores.

At 6.30 p.m. on 15 November there was a meeting of the General Staff with military heads and commanders to adopt new measures to deal with the offensive. Colonel Ponce authorized the elimination of ringleaders, trade unionists and known leaders of FMLN and a decision was taken to step up bombing by the Air Force and to use artillery and armoured vehicles to dislodge FMLN from the areas it controlled.

The Minister of Defence, General Rafael Humberto Larios López, asked whether anyone objected. No hand was raised. It was agreed that President Cristiani would be consulted about the measures.

After the meeting, the officers stayed in the room talking in groups. One of these groups consisted of Colonel Réne Emilio Ponce, General Juan Rafael Bustillo, Colonel Francisco Elena Fuentes, Colonel Juan Orlando Zepeda and Colonel Inocente Orlando Montano. Colonel Ponce called over Colonel Guillermo Alfredo Benavides and, in front of the four other officers, ordered him to eliminate Father Ellacuría and to leave no witnesses. He also ordered him to use the unit from the Atlacatl Battalion which had carried out the search two days earlier.

From 12 to 1.30 a.m. the next day, 16 November, President Cristiani met with the High Command. According to his statement, the President approved a new arrangement for using armoured units of the cavalry regiment and artillery pieces; at no time during this meeting was anything said about UCA.

The cover-up

During the early hours of the morning of 16 November, Major Carlos Camilo Hernández Barahona and Lieutenant José Vicente Hernández Ayala went in person to Colonel Ponce's office to report on everything that had happened at UCA. They reported that they had a small suitcase with photographs, documents and money which the soldiers had stolen from the Jesuits a few hours earlier. Colonel Ponce ordered it destroyed because it was evidence of the armed forces' responsibility. They destroyed the suitcase at the Military College.

On returning to his unit, Lieutenant Espinoza Guerra informed the Commander of the Atlacatl Battalion, Lieutenant Colonel Oscar Alberto León Linares, of what had happened.

President Cristiani entrusted the investigation of the crime to the Commission for the Investigation of Criminal Acts (CIHD).

Colonel Benavides told Lieutenant Colonel Manuel Antonio Rivas Mejía, Head of CIHD, what had happened and asked him for help. Mejía recommended that the barrels of the weapons which had been used be destroyed and replaced with others in order to prevent them from being identified during ballistic tests. This was later done with the assistance of Lieutenant Colonel Oscar Alberto León Linares.

Lieutenant Colonel Rivas Mejía also advised Colonel Benavides to make sure that no record remained of those entering and leaving the Military College that would make it possible to identify the culprits. Subsequently, Colonel Benavides and Major Hernández Barahona ordered that all Military College arrival and departure logs for that year and the previous year be burned.

Shortly after the investigation began, Colonel René Emilio Ponce arranged for Colonel Nelson Iván López y López, head of unit I of the General Staff, who had also been in charge of the General Staff Tactical Operations Centre during the entire night of 15 to 16 November, to join CIHD in order to assist in the investigation of the case.

In November, CIHD heard two witnesses, Deputy Sergeant Germán Orellana Vázquez and police officer Victor Manuel Orellana Hernández, who testified that they had seen soldiers of the Atlacatl Battalion near UCA that night; they later changed their statements.

Another witness also retracted her initial statement. Lucía Barrera de Cerna, an employee at the University, said that she had seen, from a building adjacent to the Jesuits' residence, soldiers in camouflage and berets. In the United States, where she went for protection, she was questioned by the Federal Bureau of Investigation (FBI) and retracted her earlier statement. Lieutenant Colonel Rivas Mejía, Head of CIHD, was present when she was questioned. Subsequently, she confirmed her original statement.

CIHD did not take a statement from Colonel Benavides, even though the incident had occurred within his command zone. According to the court dossier, the first statement Benavides made was on 11 January 1990 to the Special Honour Commission.

On 2 January 1990, a month and a half after the murders, Major Eric Warren Buckland, an officer of the United States Army and an adviser to the armed forces of El Salvador, reported to his superior, Lieutenant Colonel William Hunter, a conversation he had some days previously with Colonel Carlos Armando Avilés Buitrago. During that conversation, Avilés Buitrago had told him that he had learnt, through Colonel López y López, that Benavides had arranged the murders and that a unit from the Atlacatl Battalion had carried them out. He also said that Benavides had asked Lieutenant Colonel Rivas Mejía for help.

Lieutenant Colonel William Hunter informed the Chief of the United States Military Mission, Colonel Milton Menjívar, who arranged a meeting in Colonel Ponce's office where Buckland and Avilés were brought face to face. Avilés denied having given Buckland such information.

A few days after Buckland's statements were reported, the Minister of Defence established a Special Honour Commission, consisting of five officers and two civilians, to investigate the murders.

On learning what CIHD had found out, the Honour Commission questioned some 30 members of the Atlacatl Battalion, including Lieutenant Espinoza Guerra and Second Lieutenant Guevara Cerritors, and a number of officers of the Military College, including Colonel Benavides and Lieutenant Mendoza Vallecillos.

Lieutenants Espinoza and Mendoza and Second Lieutenant Guevara, as well as the soldiers who had participated in the murders, confessed their crime in extrajudicial statements to the Honour Commission.

A civilian member of the Commission, Rodolfo Antonio Parker Soto, legal adviser to the General Staff, altered their statements in order to delete any reference to the existence of orders from above. He also deleted the references to some officers, including the one to Major Carlos Camilo Hernández Barahona.

On 12 January, the Commission submitted its report to President Cristiani. The report identified nine people as being responsible for the murders, four officers and five soldiers; they were arrested and later brought to trial. Subsequently, newly promoted Lieutenant Colonel Carlos Camilo Hernández Barahona was included in the trial.

The pre-trial proceedings took nearly two years. During this time, Colonel (now General) René Emilio Ponce, Colonel (now General) Juan Orlando Zepeda, Colonel Inocente Orlando Montano and Colonel (now General) Gilberto Rubio Rubio pressured lower-ranking officers not to mention orders from above in their testimony to the court.

Finally, the trial by jury took place on 26, 27 and 28 September 1991 in the building of the Supreme Court of Justice. The identity of the five members of the jury was kept secret. The accused and the charges were as follows:

Colonel Guillermo Alfredo Benavides Moreno, Lieutenant José Ricardo Espinoza Guerra and Second Lieutenant Gonzalo Guevara Cerritos: accused of murder, acts of terrorism, acts preparatory to terrorism and instigation and conspiracy to commit acts of terrorism.

Lieutenant Yusshy René Mendoza Vallecillos: accused of murder, acts of terrorism, acts preparatory to terrorism, instigation and conspiracy to commit acts of terrorism and of being an accessory.

Deputy Sergeant Antonio Ramiro Avalos Vargas, Deputy Sergeant Tomás Zarpate Castillo, Corporal Angel Pérez Vásquez and Private Oscar Mariano Amaya Grimaldi: accused of murder, acts of terrorism and acts preparatory to terrorism.

Private Jorge Alberto Sierra Ascencio: tried in absentia for murder.
Lieutenant Colonel Carlos Camilo Hernández Barahona: accused of being an accessory.

The jury had to decide only with respect to the charges of murder and acts of terrorism. The other charges were left to the judge to decide.

Only Colonel Guillermo Alfredo Benavides Moreno and Lieutenant Yusshy René Mendoza Vallecillos were found guilty of murder. The judge gave them the maximum sentence, 30 years in prison, which they are currently serving. The judge also found Colonel Benavides and Lieutenant Mendoza guilty of instigation and conspiracy to commit acts of terrorism. Lieutenants Espinoza and Guevara Cerritos were sentenced to three years for instigation and conspiracy to commit acts of terrorism. Lieutenant Colonel Hernández was also sentenced by the judge to three years for being an accessory and Mendoza Vallecillos was also convicted on that charge. Espinoza, Guevara and Hernández were released and continued in active service in the armed forces.

FINDINGS

The Commission on the Truth makes the following findings and recommendations:

1. There is substantial evidence that on the night of 15 November 1989, then Colonel René Emilio Ponce, in the presence of and in collusion with General Juan Rafael Bustillo, then Colonel Juan Orlando Zepeda, Colonel Inocente Orlando Montano and Colonel Francisco Elena Fuentes, gave Colonel Guillermo Alfredo Benavides the order to kill Father Ignacio Ellacuría and to leave no witnesses. For that purpose, Colonel Benavides was given the use of a unit from the Atlacatl Battalion, which two days previously had been sent to search the priest's residence.

2. There is evidence that, subsequently, all these officers and others, knowing what had happened, took steps to conceal the truth. There is sufficient evidence that General Gilberto Rubio Rubio, knowing what had happened, took steps to conceal the truth.

3. There is full evidence that:

(a) That same night of 15 November, Colonel Guillermo Alfredo Benavides informed the officers at the Military College of the order he had been given for the murder. When he asked whether anyone had any objection, they all remained silent.

(b) The operation was organized by then Major Carlos Camilo Hernández Barahona and carried out by a group of soldiers from the Atlacatl Battalion under the command of Lieutenant José Ricardo Espinoza Guerra and Second Lieutenant Gonzalo Guevara Cerritos, accompanied by Lieutenant Yusshy René Mendoza Vallecillos.

4. There is substantial evidence that:

(a) Colonel Oscar Alberto León Linares, Commander of the Atlacatl Battalion, knew of the murder and concealed incriminating evidence.

(b) Colonel Manual Antonio Rivas Mejía of the Commission for the Investigation of Criminal Acts (CIHD) learnt the facts and concealed the truth

and also recommended to Colonel Benavides measures for the destruction of incriminating evidence.

(c) Colonel Nelson Iván López y López, who was assigned to assist in the CIHD investigation, learnt what had happened and concealed the truth.

5. There is full evidence that Rodolfo Antonio Parker Soto, a member of the Special Honour Commission, altered statements in order to conceal the responsibility of senior officers for the murder.

6. The Commission believes that it is unfair that Colonel Guillermo Alfredo Benavides Moreno and Lieutenant Yusshy René Mendoza Vallecillos should still be in prison when the people responsible for planning the murders and the person who gave the order for the murder remain at liberty. In the Commission's view, the request by the Society of Jesus that Colonel Guillermo Alfredo Benavides Moreno and Lieutenant Yusshy René Mendoza Vallecillos be pardoned should be granted by the relevant authorities.

2. EXTRAJUDICIAL EXECUTIONS

(a) SAN FRANCISCO GUAJOYO

SUMMARY OF THE CASE

In the early hours of 29 May 1980, 58 members of the security forces and the Second Infantry Brigade arrived at San Francisco Guajoyo cooperative in Belén Güijat canton, Metapán district, Department of Santa Ana, dragged members of the cooperative from their homes in the adjoining houses and took them to the central area of the farm.

That same morning, the bodies of 12 victims were found, covered with a blanket on which were written the words "killed as traitors". Shortly afterwards, the justice of the peace carried out the requisite procedures.

The Commission finds the following:

1. On 29 May 1980, two employees of the Salvadorian Institute for Agrarian Reform (ISTA) and 10 members of the San Francisco Guajoyo cooperative were executed with large-calibre firearms in the central area of the cooperative, after having been dragged from their homes.

2. The deaths did not occur during an armed confrontation.

3. Members of the Second Infantry Brigade and of the security forces having jurisdiction in the Department of Santa Ana were responsible for the incident.

4. The Salvadorian State bears full responsibility for the execution of the cooperative members, which was a violation of international humanitarian law and international human rights law, and for having taken no action to identify and punish those responsible.

DESCRIPTION OF THE FACTS 129/

General background

The San Francisco Guajoyo cooperative was founded in 1977 and there were some 260 families who were members. The organization did a great deal of educational and advocacy work.

The army and security forces launched a smear campaign against members of the cooperative, accusing them of being guerrillas. In 1979, the threats increased. There were constant army patrols and persecution was stepped up. Most members of the cooperative used to sleep in the hills for fear of being dragged from their homes in the night.

The operations were carried out by troops from the Second Brigade and by security forces, often accompanied by civil defence members. The accusation was always the alleged ties between cooperative members and the guerrillas, but cooperative members believed that the real motive was to block their demands.

The military operation

In the early hours of 29 May 1980, between 50 and 80 members of the Second Infantry Brigade, the National Police, the Treasury Police and the National Guard, including some National Guard members who were responsible for guarding the Guajoyo CEL, approached the San Francisco Guajoyo cooperative building.

The military contingent entered the cooperative from two equidistant points, moving in on the stable and dwellings located near its centre. They dragged cooperative members from their homes and took them to the central area of the farm. People were arrested according to a list, "although towards the end, they were taking anyone to the courtyard of the house".

Soldiers simultaneously burst into the cooperative offices, seizing three members of the cooperative who were looking after the premises. The group that entered the offices was headed by Adán Figueroa, 130/ known as "calache", of the Treasury Police, originally from Tahuilapa canton. They took the three to the central area of the farm. One of the survivors observed that "the others had already been made to lie face down, ready to be killed". Everyone was asked who they were and where they were hiding the weapons. A few minutes later the shooting began.

On realizing the operation was under way, particularly on hearing the noise of houses being searched, other members of the cooperative ran from their homes. One witness stated that a member who was on guard in the cooperative's tobacco storeroom came to his house to warn him that a military truck had arrived. He was able to hide in time, but he heard the shots and "the cries and suffering" of those who had been arrested.

The executions

Twelve people were executed. According to the records of the Metapán Second Magistrate's Court, the bodies were found in the central area of the farm. Seven bodies were found in the farmhouse courtyard, lying at intervals of

about half a metre apart. The remaining five bodies were lying at a short distance from the first group. According to the forensic examination, all the wounds were caused by large-calibre weapons.

They executed people who apparently were not on the list. This was true of José Angel Mira, a mentally handicapped person who was arrested. When his father asked them to let his son go, the officer told him to lie down next to his son so that they could die together. This is what in fact happened.

Members of the cooperative who had fled to the hills found the bodies when they returned after the attack. Near the bodies they found a blanket on which were written the words "killed as traitors". According to witnesses, combined forces often did this to create confusion as to who was responsible.

Public version of the incident

The next day, a press source reported that a guerrilla camp had been discovered in an area close to Metapán "hours after alleged left-wing guerrillas killed 12 peasants, members of a cooperative which was working a farm taken over as part of the agrarian reform, in the area where the camp was discovered". It went on to say that "the Armed Forces Press Committee told ACAN-EFE" that some 30 guerrillas had joined the battle with the members of the National Guard who discovered the camp. According to the source, there had been no military casualties; however, it did not specify the number of guerrilla casualties either.

Another source, under the headline "12 killed at farm in subversive attack", reported an armed confrontation in which 12 people had been killed; "mostly peasants, and two ISTA employees wounded, at the San Francisco farm in Metapán district". It also reported that troops had been deployed: "men in olive-green uniforms entered the farm at Guajoyo in La Joya canton, Metapán district".

Action taken by the judiciary

On the morning of the executions, the competent justice of the peace went to the cooperative with his secretary and two forensic doctors to carry out the requisite legal procedures. The main findings in the record are as follows:

(a) Twelve people were shot and killed in the early hours of that day;

(b) Witnesses stated that a group of individuals in olive-green uniforms accompanied by civilians, who had dragged the victims from their homes, were responsible for the execution;

(c) According to the forensic examination, a number of the victims had been shot in the back and several of the bodies had been shot at close range. 131/ Furthermore it was not possible to determine where the bullets had entered and exited the bodies. 132/ Several of the victims were barefoot and only half dressed.

Having completed the preliminary inquiries, the justice of the peace transmitted the information to the ordinary court to institute the corresponding

judicial investigation. That court took no further action and filed the information.

FINDINGS

The Commission finds the following:

1. There is full evidence that, on 29 May 1980, two employees of the Salvadorian Institute for Agrarian Reform (ISTA) and 10 members of the San Francisco Guajoyo cooperative were executed with large-calibre firearms in the central area of the cooperative, after having been dragged from their homes.

2. There is sufficient evidence to attribute responsibility for the incident to members of the Second Infantry Brigade and of the security forces having jurisdiction in the Department of Santa Ana.

3. The Salvadorian State bears full responsibility for the execution of the cooperative members, which was a violation of international humanitarian law and international human rights law, and for having taken no action to identify and punish those responsible.

(b) THE LEADERS OF THE FRENTE DEMOCRATICO REVOLUCIONARIO

SUMMARY OF THE CASE

On 27 November 1980, Enrique Alvarez Córdoba, 133/ Juan Chacón, 134/ Enrique Escobar Barrera, 135/ Manuel de Jesús Franco Ramírez, 136/ Humberto Mendoza 137/ and Doroteo Hernández, 138/ political leaders of the Frente Democrático Revolucionario (FDR), 139/ representing an important sector of Salvadorian society, were abducted, tortured and, after a short period in captivity, executed in San Salvador.

The abduction was carried out during the morning at the Colegio San José by a large number of heavily armed men.

The climate of violence and insecurity prevailing in the country at the time was such that, had it not been for who the victims were, the place and time of the abduction, the type of operation and the public outrage it caused, it would have been just one more in the long list of abuses that were occurring at the time.

The Commission on the Truth concludes that it was an operation carried out by one or more public security forces and that the Treasury Police were responsible for the external security operation which aided and abetted the perpetrators. By commission and, in failing to properly investigate the incident, by omission, the State failed to comply with its obligations under international human rights law to protect and guarantee the enjoyment by individuals of their most elementary rights.

DESCRIPTION OF THE INCIDENT

The six victims were abducted from the Colegio San José, a Jesuit School Society in the very heart of the capital city, San Salvador, between 9.30 a.m. and 11 a.m. on 27 November 1980. In the immediate vicinity of the school, there are other educational centres, a number of hospitals and, to the north, the former United States Embassy, which at the time was under heavy guard.

The ground floor of the central building housed the rector's office, the administration and the Christian Legal Aid office, which had been in existence since 1975 when the school had started working with the neediest social sectors.

The workload of Christian Legal Aid had increased appreciably because, in addition to the normal stream of people coming to seek assistance, other entities which had been doing the same kind of work had closed their doors because of the prevailing climate of terror. 140/

Despite the large numbers of people going in and out of the school, the building had no security system. There were just a few unarmed porters at the central entrance to the educational complex. That morning there was only one porter at the main entrance.

The facts

The operation was carried out between 9.30 a.m. and 11 a.m. Initially, an unspecified number of men seized the porter, took him some 500 metres from the entrance and radioed to other people that they could go in.

They opened the gate and let in a number of vehicles carrying people who were heavily armed with machine-guns and "G3" rifles. 141/ The group went swiftly over to the central entrance of the main building and placed people against the wall ordering them to lie on the ground and close their eyes. Members of the group also stationed themselves at the entrances to the school and dealt in similar fashion with anyone who approached. Reports at the time put the total number of men who participated in the operation at between 13 and 200. 142/ According to the information received, the speed with which the bodies were dumped in the street in full view of passers-by was clearly intended to ensure that they were readily identified, so as to lessen the political pressure on the case.

The first four bodies and that of Alvarez Córdoba were found on the outskirts of the resort city of Apulo, in Ilopango district, approximately one hour by car from San Salvador. The Ilopango justice of the peace made the legal examination and opened a dossier which was later sent to the Fourth Criminal Court in San Salvador.

The Commission did not find that any judicial, police or administrative remedy had been sought to preserve the physical integrity of the abducted men. In its view, this was because people were very afraid and distrustful of using judicial bodies.

The Court dossier which the Commission studied shows clearly that the organ entrusted with investigating the case did not conduct a proper investigation; it finally closed the case on 8 October 1982. In fact, only bureaucratic measures were taken; no autopsy was performed, nor was anything else done to clarify the facts and find out who was responsible. 143/

ANALYSIS

Once the news broke, a war of communiqués ensued over who had committed the deed, whether part of the security forces or else the death squads acting without the direct participation of government forces. The possibility of it being the work of left-wing groups was also considered. 144/ The government Junta, for its part, urged that the physical and psychological integrity of the abducted leaders be respected. 145/

At the political level, the abduction of the opposition leaders closed the door to negotiations and fuelled demands for armed confrontation against the third Revolutionary Government Junta. It is worth recalling that the very day the incident occurred, the former Foreign Minister, Fidel Chávez Mena, was in Washington, D.C. at the General Assembly of the Organization of American States (OAS), talking with church and opposition circles in an effort to secure a negotiated outcome to the crisis. 146/

The Revolutionary Government Junta (JRG) offered to carry out an exhaustive investigation into the incident and emphatically denied that security forces under its command had participated. The investigations that were carried out were purely a formality. For example, although a considerable number of people had been present when the incident took place, only four of them were interviewed. The Commission requested, but was not given, the report of the National Police. 147/

The incident outraged public opinion, prompting the armed forces and the Office of the President to interview some of the eyewitnesses. All political sectors in the country disclaimed responsibility for the incident, accusing other sectors.

FDR turned the funeral into a political rally, introducing the organization's new leadership and asserting that paramilitary groups, with the complicity at least of the security forces, were responsible for the murders. 148/

From all the evidence which the Commission has gathered, it is clear that the purpose of the operation was to arrest the FDR leaders. It does not seem possible that the operation and its outcome could have occurred by chance or that it could have had any other purpose. The manner in which those participating in the operation entered the building and the surrounding area leaves no doubt that it was, indeed, an operation designed specifically to capture the leaders.

According to the various theories that have been put forward, the operation was carried out by paramilitary groups, by security forces or by a combination of the two; it may also have been an independent operation by members of those State organs.

For example, the Brigada Anticomunista General Maximiliano Hernández Martínez claimed responsibility for the murders. This group has been identified as one of several which the extreme right-wing used to claim responsibility for such actions. One witness told the Commission that, at the time the incident occurred, some soldiers in active service were members of the Brigade.

In the Commission's view, the characteristics of the operation show that, while there may not have been unified planning by some security forces, the coverage provided for the execution of the crime was centralized and, without it, the operation would have been highly risky or very difficult to carry out. In any event, it is unlikely that the operation could have been carried out so openly without at least the complicity of the security forces which, moreover, were keeping a close watch on the political leaders and on the school itself because of the activities that were going on there.

Indeed, the time, the place, the number of personnel, the radio equipment, vehicles, weapons and uniforms used, the slang and the chain of command, the fact that the participants withdrew without any problem and the absence of a proper investigation by the security forces indicate the extent to which those forces were involved.

According to diplomatic reports, it was widely believed that the crime had been committed by security forces including, possibly, the Treasury Police. The testimony given by several people points in this direction. The Commission has substantial evidence that the Treasury Police carried out the security operation on the school's perimeter. The Commission summonsed several officers who held positions of responsibility at the time in that institution. The few who did appear roundly denied having had anything to do with the incident.

Other information received by the Commission concerning the activities of the security and intelligence forces indicates that the National Guard carried out the operation, acting independently of the General Staff.

As indicated earlier, the Commission cannot, in any case, accept the idea that the operation was carried out without the cooperation of senior commanders of one or more security forces, which at the time were headed by military officers.

Based on the available information, it is difficult to determine whether the operation was planned at the highest level of the armed forces or whether, instead, it was instigated by middle-ranking commanders of the security forces, resulting in de facto situations that were difficult to reverse.

Lastly, the Commission tried in vain to establish who gave the order to kill the FDR leaders and whether that was part of the original plan or was decided upon subsequently. Given the conditions of violence prevailing at the time, an operation of this kind clearly involved a very high risk that the persons captured would be eliminated.

The Commission received reliable information that the final execution order was discussed at the highest level of right-wing sectors. It is alleged that there were telephone calls between those who carried out the murders and those who planned them. According to the testimony received, the latter allegedly decided to act as swiftly as possible in order to reduce the political pressure created by the capture of the victims.

FINDINGS

The Commission finds that:

1. The abduction, torture and subsequent murder of the political and trade union leaders was an act that outraged national and international public opinion and closed the door to any possibility of a negotiated solution to the political crisis at the end of 1980. It was a very serious act which warranted the most thorough investigation by the Commission on the Truth.

2. It is not possible to determine precisely which public security force carried out these criminal operations. Nevertheless, the Commission considers that there is sufficient evidence to indicate that State bodies were jointly responsible for this incident, which violated international human rights law.

3. The Commission has substantial evidence that the Treasury Police carried out the external security operation which aided and abetted those who committed the murders.

4. There has been an obvious lack of interest in ordering an exhaustive investigation by an independent State organ to clarify the facts, find out who was responsible and bring those responsible to justice.

(c) THE AMERICAN CHURCHWOMEN

SUMMARY OF THE CASE

On 2 December 1980, members of the National Guard of El Salvador arrested four churchwomen after they left the international airport. Churchwomen Ita Ford, Maura Clarke, Dorothy Kazel and Jean Donovan were taken to an isolated spot and subsequently executed by being shot at close range.

In 1984, Deputy Sergeant Luis Antonio Colindres Alemán and National Guard members Daniel Canales Ramírez, Carlos Joaquín Contreras Palacios, Francisco Orlando Contreras Recinos and José Roberto Moreno Canjura were sentenced to 30 years in prison for murder.

The Commission on the Truth finds that:

1. The arrest and execution of the churchwomen was planned prior to their arrival at the airport. Deputy Sergeant Luis Antonio Colindres Alemán carried out orders of a superior to execute them.

2. Then Colonel Carlos Eugenio Vides Casanova, Director-General of the National Guard, Lieutenant Colonel Oscar Edgardo Casanova Vejar, Commander of the Zacatecoluca military detachment, Colonel Roberto Monterrosa, Major Lizandro Zepeda Velasco and Sergeant Dagoberto Martínez, among other military personnel, knew that members of the National Guard had committed the murders pursuant to orders of a superior. The subsequent cover-up of the facts adversely affected the judicial investigation process.

3. The Minister of Defence at the time, General José Guillermo García, made no serious effort to conduct a thorough investigation of responsibility for the murders.

4. Local commissioner José Dolores Meléndez also knew of the executions carried out by members of the security forces and covered them up.

5. The State of El Salvador failed in its responsibility to investigate the facts thoroughly, to find the culprits and to punish them in accordance with the law and the requirements of international human rights law.

DESCRIPTION OF THE FACTS 149/

The murders

Shortly after 7 p.m. on 2 December 1980, members of the National Guard of El Salvador arrested four churchwomen as they were leaving Comalapa International Airport. Churchwomen Ita Ford, Maura Clarke, Dorothy Kazel and Jean Donovan were taken to an isolated spot where they were shot dead at close range.

Two of the four murdered churchwomen, Ita Ford and Maura Clarke, worked in Chalatenango and were returning from Nicaragua. The other two had come from La Libertad to pick them up at the airport.

The arrests were planned in advance. Approximately two hours before the churchwomen's arrival, National Guard Deputy Sergeant Luis Antonio Colindres Alemán informed five of his subordinates that they were to arrest some people who were coming from Nicaragua.

Colindres then went to the San Luis Talpa command post to warn the commander that, if he heard some disturbing noises, he should ignore them, because they would be the result of an action which Colindres and his men would be carrying out.

Once the members of the security forces had brought the churchwomen to an isolated spot, Colindres returned to his post near the airport. On returning to the place where they had taken the churchwomen, he told his men that he had been given orders to kill the churchwomen.

The investigation

1. The burial

The next morning, 3 December, the bodies were found on the road. When the justice of the peace arrived, he immediately agreed that they should be buried, as local commissioner José Dolores Meléndez had indicated. Accordingly, local residents buried the churchwomen's bodies in the vicinity.

The United States Ambassador, Robert White, found out on 4 December where the churchwomen's bodies were. As a result of his intervention and once authorization had been obtained from the justice of the peace, the corpses were exhumed and taken to San Salvador. There, a group of forensic doctors refused to perform autopsies on the grounds that they had no surgical masks.

2. The Rogers-Bowdler mission

Between 6 and 9 December 1980, a special mission arrived in San Salvador, headed by Mr. William D. Rogers, a former official in the Administration of President Gerald Ford, and Mr. William G. Bowdler, a State Department official.

They found no direct evidence of the crime, nor any evidence implicating the Salvadorian authorities. They concluded that the operation had involved a cover-up of the murders. 150/ They also urged the Federal Bureau of Investigation (FBI) to play an active role in the investigation. 151/

3. The Monterrosa commission and the Zepeda investigation

The Government Junta put Colonel Roberto Monterrosa in charge of an official commission of investigation. Colonel Carlos Eugenio Vides Casanova, Director-General of the National Guard, put Major Lizandro Zepeda 152/ in charge of another investigation. Neither official took the case seriously or sought to resolve it. Subsequently, Judge Harold R. Tyler, Jr., appointed by the United States Secretary of State, carried out a third investigation. It found that the

purpose of the two previous investigations had been to establish a written precedent clearing the Salvadorian security forces of blame for the killings. 153/

(a) The Monterrosa commission

Colonel Monterrosa admitted that his commission had ruled out the possibility that security forces had been involved in the crime; to have acknowledged it would have created serious difficulties for the armed forces.

In fact, Monterrosa kept back the evidence implicating Colindres. In February 1981, he sent the United States Embassy the fingerprints of three out of four National Guard members from whom the commission had taken statements. However, none of them appeared to have been involved in the murders. Colonel Monterrosa failed to provide the fingerprints of the fourth man, Colindres, from whom testimony had also apparently been taken. Judge Tyler therefore concluded that Colonel Monterrosa had not forwarded Colindres' fingerprints because he knew from Major Zepeda that Colindres was responsible for the executions. 154/

(b) The Zepeda investigation

Major Zepeda reported that there was no evidence that members of the National Guard had executed the churchwomen. 155/ According to testimony, Major Zepeda personally took charge of covering up for the murderers by ordering them to replace their rifles so as not to be detected, and to remain loyal to the National Guard by suppressing the facts.

There is also sufficient evidence that Major Zepeda informed his superior, Vides Casanova, of his activities. 156/

4. Resolution of the case

In April 1981, 157/ the United States Embassy provided the Salvadorian authorities with evidence incriminating Colindres and his men. Despite the existence of evidence against Colindres, such as the presence of his fingerprints on the churchwomen's minibus, neither he nor his subordinates were charged with any crime. 158/

In December 1981, Colonel Vides Casanova appointed Major José Adolfo Medrano to carry out a new investigation. In February 1982, one of the persons involved confessed his guilt and implicated the others, including Colindres. All of them were charged with the deaths of the churchwomen.

On 10 February, President Duarte, in a televised message, reported that the case had been resolved. He also gave to understand that Colindres and his men had acted independently and not on orders of a superior. In conclusion, he said that the Government was convinced that the accused were guilty. 159/

The judicial process

1. The judicial investigation

The judicial investigation did not represent any substantial progress over what the Medrano working group had done. Nevertheless, under questioning by the FBI, Sergeant Dagoberto Martínez, then Colindres' immediate superior, admitted to having been told by Colindres himself about the churchwomen's murders and about his direct role in them. On that occasion, Martínez had warned Colindres not to say anything unless his superiors asked him about it. Martínez also said that he had not been aware that orders had been given by a superior. 160/

2. The trial

On 23 and 24 May 1984, members of the National Guard were found guilty of the executions of the churchwomen and were sentenced to 30 years in prison. 161/

It was the first time in Salvadorian history that a member of the armed forces had been convicted of murder by a judge. 162/ Despite ambiguous statements by some of its official representatives, 163/ the United States Government had made its economic and military aid contingent on a resolution of the case. 164/

The involvement of senior officers

Although the Tyler Report concluded in 1983, "... based on existing evidence", 165/ that senior officers had not been involved, the Commission believes that there is sufficient evidence to show that Colindres acted on orders of a superior.

There is also substantial evidence that Lieutenant Colonel Oscar Edgardo Casanova Vejar, Commander of the Zacatecoluca detachment, was in charge of the National Guard at the national airport at the time when the murders of the churchwomen occurred.

General Vides Casanova and Colonel Casanova Vejar have denied any personal involvement in the arrest and execution or in the subsequent cover-up of the crime. Nevertheless, there is sufficient evidence to show that both General Vides Casanova and Colonel Casanova Vejar knew that members of the National Guard had murdered the churchwomen, and that their efforts to impede the gathering of evidence adversely affected the judicial investigation.

Cooperation with the Commission on the Truth

On several occasions from October 1992 onwards, the judge of the First Criminal Court of Zacatecoluca, Mr. Pleitus Lemus, refused to cooperate with the Commission on the Truth and to provide the evidence and the full court dossiers of the case. He transmitted only a condensed version which does not include testimony and other critical evidence on the possible involvement of senior officers 166/ in the case.

It was only after much insisting that, on 8 January 1993, the Commission finally obtained all the dossiers of the case from the Supreme Court, barely a week before its mandate expired.

FINDINGS

The Commission on the Truth finds that:

1. There is sufficient evidence that:

(a) The arrest of the churchwomen at the airport was planned prior to their arrival.

(b) In arresting and executing the four churchwomen, Deputy Sergeant Luis Antonio Colindres Alemán was acting on orders of a superior.

2. There is substantial evidence that:

(a) Then Colonel Carlos Eugenio Vides Casanova, Director-General of the National Guard, Lieutenant Colonel Oscar Edgardo Casanova Vejar, Commander of the Zacatecoluca military detachment, Colonel Roberto Monterrosa, Major Lizandro Zepeda Velasco and Sergeant Dagoberto Martínez, among other officers, knew that members of the National Guard had committed the murders and, through their actions, facilitated the cover-up of the facts which obstructed the corresponding judicial investigation.

(b) The Minister of Defence at the time, General José Guillermo García, made no serious effort to conduct a thorough investigation of responsibility for the murders of the churchwomen.

(c) Local commissioner José Dolores Meléndez also knew of the murders and covered up for the members of the security forces who committed them.

3. The State of El Salvador failed in its obligation under international human rights law to investigate the case, to bring to trial those responsible for ordering and carrying out the executions and, lastly, to compensate the victims' relatives.

(d) EL JUNQUILLO

SUMMARY OF THE CASE

On 3 March 1981, a military operation took place in the north of the Department of Morazán. Units under Captain Carlos Napoleón Medina Garay arrived at El Junquillo and stayed there for 8 to 12 days. On leaving, Captain Medina Garay ordered the execution of the civilian population in El Junquillo canton.

On 12 March 1981, soldiers and members of the Cacaopera civil defence unit attacked the population, consisting solely of women, young children and old people. They killed the inhabitants and raped a number of women and little girls under the age of 12. They set fire to houses, cornfields and barns.

The Commission finds that:

1. On 12 March 1981, units of the Military Detachment at Sonsonate and members of the civil defence unit at Cacaopera indiscriminately attacked and summarily executed men, women and children of El Junquillo canton in the district of Cacaopera, Department of Morazán.

2. Captain Carlos Napoleón Medina Garay ordered the execution of the inhabitants of El Junquillo canton.

3. Colonel Alejandro Cisneros, the military commander in charge of the operation carried out in March 1981 in northern Morazán, involving units from Military Detachment No. 6 at Sonsonate under the command of Captain Medina Garay, failed in his duty to investigate whether troops under his command had executed members of the civilian population of El Junquillo canton.

4. The Government and the judiciary of El Salvador failed to conduct investigations into the incident. The State thus failed in its duty under international human rights law to investigate, bring to trial and punish those responsible and to compensate the victims or their families.

5. The Minister of Defence and Public Security, General René Emilio Ponce, is responsible for failing to provide this Commission with information on the military operation carried out in the area of El Junquillo canton, thereby failing to honour the obligation to cooperate with the Commission on the Truth entered into by the Government when it signed the peace agreements, and thus for preventing the identification of other soldiers who took part in the massacre.

DESCRIPTION OF THE FACTS 167/

The massacre

On 3 March 1981, a military operation was launched in northern Morazán, with Colonel Alejandro Cisneros in charge. In the course of the operation, soldiers from the Military Detachment at Sonsonate, under the command of Captain Carlos Napoleón Medina Garay, went to El Junquillo.

The unit set up camp in the El Junquillo area, where it remained for 8 to 12 days. According to the testimony received, as the unit was preparing to withdraw to a different location, Captain Medina Garay ordered another officer to do the job they had agreed on before leaving the hamlet.

On the night of 11 March 1981, soldiers occupied the hills near El Junquillo canton. The next day, they shelled the canton for 15 minutes. After the shelling, soldiers entered the canton in large numbers and closed in on the houses.

According to the testimony, soldiers and civil defence members proceeded to kill the following persons: Francisca Díaz, her daughters Juana and Santana Díaz, and nine children all under the age of 10; Guillerma Díaz, her 13-year-old daughter María Santos Díaz, and five children under the age of 12; Doroteo Chicas Díaz, his wife and his one-day-old son, and seven children under the age of 10; Eulalio Chicas, his wife and his three sons; Rosa Ottilia Díaz, her daughter-in-law María Argentina Chicas Chicas, and the children who were present; Santos Majín Chicas, his wife and his daughters Lencha aged 12 and Gertrudis aged 9; Tránsito Chicas, aged 58, and Filomena Chicas, aged 68; Luciano Argueta, his wife Ufemia Sánchez, and two sons, under the age of seven; Leopoldo Chicas, an 80-year-old man, and Esteban and Vicente Argueta, both aged over 70; and Petronila and two of her sons, under the age of 11. Some of the victims were shot in the back of the head; some of the children's bodies had knife wounds in the chest and bullet holes in the back of the head. In some cases, the bodies had been burned. According to testimony, some of the women and little girls had been raped.

The soldiers and civil defence members set fire to the houses in the hamlet and to cornfields and barns. They stole some of the corn which the farmers had stored and killed a number of animals.

The survivors fled. The next day, a peasant returned to see what had happened. In the house of Doroteo Chicas, he saw the dead bodies of the Chicas children. The soldiers noticed he was there and shot at him several times. He fled to the hills to hide. One survivor of the massacre returned to the canton to try to bury the victims. As the soldiers were still occupying the canton, he went back into hiding.

The survivors stayed in hiding in the hills for several days. One of them found the remains of a number of people. The survivors dug several mass graves where they buried the remains.

One survivor went to a guerrilla camp at La Guacamaya, where he recounted the episode to a priest, who took care of him.

Total absence of official investigations

When it heard about the survivors' reports, FMLN condemned the massacre on Radio Venceremos and in various statements and press releases.

Despite these public complaints, the Government, the armed forces and the judiciary of El Salvador made no attempt to investigate the incident.

FINDINGS

The Commission finds that:

1. There is substantial evidence that on 12 March 1981, units of the Military Detachment at Sonsonate and members of the civil defence unit at Cacaopera indiscriminately attacked and summarily executed men, women and children of El Junquillo canton in the district of Cacaopera, Department of Morazán.

2. There is sufficient evidence to show that Captain Carlos Napoleón Medina Garay ordered the execution of the inhabitants of El Junquillo canton.

3. There is sufficient evidence to show that Colonel Alejandro Cisneros, the military commander in charge of the operation carried out in March 1981 in northern Morazán, involving units from Military Detachment No. 6 at Sonsonate under the command of Captain Medina Garay, failed in his duty to investigate whether troops under his command had executed members of the civilian population of El Junquillo canton.

4. There is full evidence that the Government, the armed forces and the judiciary of El Salvador failed to conduct investigations into the incident. The State thus failed in its duty under international human rights law to investigate, bring to trial and punish those responsible and to compensate the victims or their families.

5. The Minister of Defence and Public Security, General René Emilio Ponce, is responsible for failing to provide this Commission with information on the military operation carried out in the area of El Junquillo canton, thereby failing to honour the obligation to cooperate with the Commission on the Truth entered into by the Government when it signed the peace agreements, and thus far preventing the identification of other soldiers who took part in the massacre.

(e) THE DUTCH JOURNALISTS

SUMMARY OF THE CASE

On the afternoon of 17 March 1982, four Dutch journalists accompanied by five or six members of FMLN, some of them armed, were ambushed by a patrol of the Atonal Battalion of the Salvadorian armed forces while on their way to territory under FMLN control. The incident occurred not far from the San Salvador-Chalatenango road, near the turn-off to Santa Rita. The four journalists were killed in the ambush and only one member of FMLN survived. Having analysed the evidence available, the Commission on the Truth has reached the conclusion that the ambush was set up deliberately to surprise and kill the journalists and their escort; that the decision to ambush them was taken by Colonel Mario A. Reyes Mena, Commander of the Fourth Infantry Brigade, with the knowledge of other officers; that no major skirmish preceded or coincided with the shoot-out in which the journalists were killed; and, lastly, that the

officer named above and other soldiers concealed the truth and obstructed the judicial investigation.

DESCRIPTION OF THE FACTS

The days before the ambush

A large number of foreign journalists were in El Salvador to cover the 1982 elections to the Constituent Assembly. The political situation in the country had aroused the interest of world public opinion. 168/

At that time, violence in the country was widespread. A number of journalists had received threats, presumably from death squads, and there had been accusations that their reporting favoured the guerrillas.

In March 1982, Koos Jacobus Andries Koster, a Dutch journalist, was in El Salvador making a report on the political and military situation in the country for the Dutch television company IKON. 169/ Producer and editor Jan Cornelius Kuiper Joop, sound technician Hans Lodewijk ter Laag and cameraman Johannes Jan Willemsen, all of them Dutch nationals, had come from Holland especially to make the report.

The team was headed by Koster, who was familiar with the political situation in the country, spoke Spanish and had the necessary contacts, since he had been working in Latin America for years. 170/

In 1980, Koster had produced a report on the civil defence units and the death squads which had had a great impact abroad. The Government had considered the report to be favourable to FMLN.

This latest report was to cover the situation in San Salvador and in a number of areas under FMLN control. According to diplomatic sources, it was "public knowledge" that the Dutch journalists were producing a report favourable to the guerrillas, similar to that of 1980.

On 7 March, as part of their work, the journalists visited Mariona prison in San Salvador to interview and film prisoners accused of belonging to the guerrilla forces. During a cultural event at the prison, one of the leaders thanked the journalists for their support for political prisoners in El Salvador. The videos filmed by the journalists included shots of prisoners' scars, which the prisoners said were the result of torture. 171/

In order to make preliminary contact with FMLN, Koster met with an FMLN member. Koster gave the man a piece of paper with his name, nationality and where he could be reached. After the meeting, the guerrilla member was followed by several men. While attempting to escape over a fence, he apparently dropped his papers, where he had put the piece of paper for safe keeping.

According to a statement made by Francisco Antonio Morán, Director-General of the Treasury Police, around that time Morán received a report from the Commander of the Military Detachment at Usulután 172/ that a piece of paper had been found in the clothing of a dead subversive 173/ which read: "Contact with Koos Koster at Hotel Alameda, room 418, tel. 239999, Dutch". As a result,

Colonel Morán gave orders that Koster be brought to Treasury Police headquarters for questioning. 174/

At around 6 a.m. on 11 March 1982, members of the Treasury Police in civilian clothing brought Koster and the three other journalists to Colonel Morán's office. 175/ Colonel Morán asked Koster about the piece of paper. Koster denied knowing any terrorists in the country and explained that the information about him might have been provided by another journalist. 176/ Before releasing the journalists, 177/ Colonel Morán warned Koster to be careful because subversive elements knew that he was in the country. 178/

The next day, 12 March, photographs of Koster and the three other journalists appeared in the newspaper, together with a press release from the Armed Forces Press Committee (COPREFA) containing a transcript of the interrogation. The article was headlined "Foreign journalist a contact for subversives" and the caption to Koster's photograph said that he had been summoned to make a statement to the Treasury Police because some of his personal papers had been found on terrorist Jorge Luis Méndez, along with a piece of paper identifying him as a "contact". 179/

That same day, Dutch journalist Jan Pierre Lucien Schmeitz, who also worked for the company IKON, arrived in the country to cover the elections. Journalists of other nationalities told him that Koster had been arrested and taken to Treasury Police headquarters, accompanied by the three other Dutch journalists.

On the night of 12 March, the four journalists met with Schmeitz. Remembering what El Salvador had been like in 1977, Schmeitz advised them to be very careful of the possible consequences of the interrogation by Colonel Morán. In spite of everything, they decided to go on with their work. 180/ Koster's FMLN contacts also urged him to leave the country for a while, but he consistently refused to postpone the journey he wanted to make for his report.

On Monday, 15 March, 181/ Schmeitz lent them his minibus but did not offer to drive it. On Tuesday, 16 March, Armin Friedrich Wertz, an independent journalist of German nationality, agreed to act as driver for a fee of $100. That same day, Koster held a further meeting with members of FMLN, at which it was agreed that they would leave the next day, 17 March. Also present at the meeting, in addition to Koster's previous contacts, was "Commander Oscar", a member of the FDR/FMLN command in Chalatenango, who was to travel with them and could act as interpreter because he knew English.

On the night of 16 March, the journalists discovered that their rooms had been searched.

The journey to Chalatenango

On the morning of Wednesday, 17 March, they picked up Schmeitz's minibus, which had the words "PRENSA-TV" painted in large letters on the sides, as was customary in El Salvador. In the afternoon, the four journalists met up with Wertz and went to a restaurant car park, where they met "Commander Oscar" of FPL (Fuerzas Populares de Liberación) Forces. A boy named "Rubén", aged between 12

and 15, also arrived; he was the guide and the only one who knew where the meeting was to take place.

At around 3 p.m., they set out from San Salvador for Chalatenango, passing through the town of Aguilares. 182/

A few kilometres before the El Paraíso barracks, Wertz noticed in the rear-view mirror that a dark brown Cherokee Chief jeep with tinted windows appeared to be following them. He slowed down, but the vehicle did not overtake; he then speeded up, but the vehicle stayed in sight. They continued on the Chalatenango road to about kilometre 65, where they took the turn-off to Santa Rita. About 1 kilometre before the turn-off, the Cherokee Chief disappeared from sight. 183/

They had driven nearly 1 kilometre on the side road when they saw a group of people. Immediately "Rubén" got out of the minibus and signalled to them. 184/ It was the contacts, who were waiting for them.

According to Wertz, the four members of the escort party were waiting on a piece of ground below the level of the dirt road and behind a barbed wire fence. One of them was carrying an automatic rifle, probably an FAL, the second a pistol, and the third a rifle of some kind. The fourth man was unarmed. According to a statement given by "Martín", 185/ the man in charge of the escort who was armed with an M-1 rifle, he went to meet the journalists with two other men, "Carlos", who had an M-16, and "Tello", who was carrying a 9-mm pistol.

When they approached the vehicle, Wertz apparently agreed with "Martín" that he would return to pick up the group at 8 a.m. on Sunday, 21 March. 186/ The journalists unloaded their equipment and, at around 5.10 p.m., took a path leading into a hollow opposite a hill.

Wertz says he then returned to San Salvador with the radio on high volume and neither saw soldiers nor heard shots during the journey. 187/

The ambush

According to "Martín" he was given the order to go and meet the group on 14 March 1982. He knew "Commander Oscar" and "Rubén". He also knew that the others were foreign journalists. He took seven men and left base camp at 4 p.m. the next day, 15 March. 188/

At around 5 a.m. on 17 March, the escort party reached a refuge 2 kilometres from the meeting place. Two men went out to reconnoitre the area over a radius of 1 kilometre, but found nothing unusual.

In their statements, "Martín" said that he had never had any problems on that route in the past, 189/ but Colonel Mario A. Reyes Mena said that the army had information that the route was being used to supply nearby guerrilla camps. During the trial, "Commander Miguel Castellanos", a former member of FMLN, said that the route was known to the army. 190/

When the escort arrived at the agreed place, the journalists put on their rucksacks, took the rest of their equipment and set off overland.

According to "Martín", the group was walking in a single file, at a distance of 4 metres apart. "Commander Oscar" led the way, followed by "Rubén", Martín was among the journalists, and "Carlos" brought up the rear with his M-16. 191/ They had gone about 250 metres when they came under heavy fire from M-16 rifles and M-60 machine-guns, coming from two hills about 100 metres away. Martín saw two of the journalists fall to the ground. They were hit by the first shots and never moved again. 192/ He headed towards the road, dodging the soldiers' fire, climbed over the barbed wire fence and escaped. 193/

Most of "Martín"'s account was confirmed by the statement made by Sergeant Mario Canizales Espinoza, who was in command of the military patrol that staged the ambush. 194/ The sergeant also said that he noticed that some members of the group were carrying equipment and were taller than the average Salvadorian; at the time, however, it did not occur to him that they might be foreigners and he assumed that they were armed. He added that, towards the end of the shoot-out, he noticed that two of the tall men were attempting to escape towards the river-bed. He came down the hill in pursuit of them and shot and killed them with his M-16 from a distance of about 25 metres. In his statements, he said he did not know for certain whether the men had been armed. 195/

The statements by the sergeant and the soldiers differ in some respects from those made by "Martín", as well as among themselves. They claim that the first shots were fired from a hill by FMLN guerrillas and that the shoot-out with the group of journalists and their escorts was part of a larger skirmish involving a second group of FMLN combatants. As indicated below, these statements do not appear to be true.

Origin of the patrol

According to the statements by Sergeant Mario Canizales Espinoza, the patrol he was commanding consisted of 25 soldiers and had been sent to inspect the area because information had been received that it was being used as a supply route for the guerrillas. According to the sergeant, his men had set the ambush because, just before the encounter, they had seen a small group of armed guerrillas heading towards the Santa Rita road and had decided to surprise them on their return. He denies having any prior knowledge that a particular group would be using that route or that it would include foreign journalists. 196/

This version of events is essentially the same as the one which subsequently appeared in the press release issued by the Armed Forces Press Committee (COPREFA).

However, according to statements made to the Commission on the Truth by officers stationed at the El Paraíso barracks at the time, a meeting was held in which officers of the General Staff of the Fourth Brigade, including its Commander, Colonel Mario A. Reyes Mena, and officers of the Atonal Rapid Deployment Infantry Battalion (BIRI) took part. According to those interviewed, the ambush was planned at that meeting, on the basis of precise intelligence data indicating that the journalists would try to enter the zone controlled by FMLN via that route the next day. 197/ The mission was entrusted to a patrol from the Atonal Battalion, which left the El Paraíso barracks at 5 a.m. on

17 March in order to avoid detection and remained in the hills all day awaiting the group's arrival.

Subsequent events

Sergeant Canizales says that, when the ambush was over, he informed barracks by radio of the outcome. 198/ Colonel Reyes Mena 199/ then dispatched a vehicle patrol which, when it arrived at the scene, found the eight bodies. 200/ The lieutenant in command sent some of his men for the Santa Rita justice of the peace, who arrived half an hour later.

According to one officer of the detachment, the lieutenant's decision to notify the justice of the peace and take the bodies to the El Paraíso barracks surprised and greatly annoyed Colonel Reyes Mena. In the end, however, Colonel Reyes Mena decided to inform the General Staff.

The next morning, 18 March, the judicial inquiry continued at the El Paraíso barracks. 201/ Because of his physical features, "Commander Oscar" was taken for a foreigner and his body was sent with those of the Dutch journalists to San Salvador.

According to Schmeitz, at around 9 a.m. he received a telephone call from Howard Lane, press attaché at the United States Embassy in El Salvador, confirming that his four colleagues were dead. 202/ He later went to COPREFA, where an official handed out a statement explaining briefly that the journalists had been killed in cross-fire during a clash between guerrillas and the army. 203/

When Schmeitz was back in his hotel room, he received a threatening phone call telling him to "stop his inquiries and leave the country, because there was a fifth coffin ready for him". He received three more such calls in the course of that night. On 20 March, Schmeitz left El Salvador.

In the days that followed, the Dutch Ambassador met with a member of the Revolutionary Government Junta to transmit his country's request to the Salvadorian authorities that it be allowed to conduct a full investigation into the incident. One key element would be to interview the sergeant and soldiers who staged the ambush, but the Salvadorian Government would not give authorization for this. In its second report, the Dutch Commission of inquiry noted that "at the request of the Government of the Netherlands, the United States Government endorsed this request to the Salvadorian authorities". 204/

"Martín", the guerrilla who survived the ambush, was taken to Holland, where he testified on 4 and 5 May 1982. Subsequently, on 19 May, the Dutch commission interviewed the sergeant at length in private. 205/

The judicial proceedings on the case came to a halt in 1988, when the judge, Dora del Carmen Gómez de Claros, sought and obtained asylum abroad. In a letter, she said that she had received anonymous threats.

The Commission requested a copy of the dossier from Margarita de los Angeles Fuente Sanabria, the current judge of the Court of First Instance at El Dulce Nombre de María, Chalatenango. Although initially

prepared to hand over the dossier, she later said that she had received instructions that the Commission should apply to the President of the Supreme Court of Justice for a copy. The Commission repeatedly telephoned and wrote to Mr. Mauricio Gutiérrez Castro, President of the Supreme Court of El Salvador, requesting a copy, but received no answer. It was the Chief State Counsel of the Republic who transmitted a copy of his dossier to the Commission.

FINDINGS

1. The Commission on the Truth considers that there is full evidence that Dutch journalists Koos Jacobus Andries Koster, Jan Cornelius Kuiper Joop, Hans Lodewijk ter Laag and Johannes Jan Willemsen were killed on 17 March 1982 in an ambush which was planned in advance by the Commander of the Fourth Infantry Brigade, Colonel Mario A. Reyes Mena, with the knowledge of other officers at the El Paraíso barracks, on the basis of intelligence data alerting them to the journalists' presence, and was carried out by a patrol of soldiers from the Atonal BIRI, under the command of Sergeant Mario Canizales Espinoza.

2. These same officers, the sergeant and others subsequently covered up the truth and obstructed the investigations carried out by the judiciary and other competent authorities.

3. These murders violated international human rights law and international humanitarian law, which stipulates that civilians shall not be the object of attack.

4. The State failed in its obligation to investigate, bring to trial and punish the guilty parties, as required under international law.

5. The President of the Supreme Court, Mr. Mauricio Gutiérrez Castro, failed to cooperate with the Commission on the Truth.

(f) LAS HOJAS

SUMMARY OF THE CASE

On 22 February 1983, members of the Jaguar Battalion, under the command of Captain Carlos Alfonso Figueroa Morales, participated in an operation in Las Hojas canton, San Antonio del Monte Municipality, Department of Sonsonate. Soldiers arrested 16 peasants, took them to the Cuyuapa river and shot and killed them at point-blank range.

The accused have consistently maintained that this was a clash with terrorists. An investigation by the Ministry of Defence concluded that no members of the armed forces were responsible for the incident.

The judicial proceedings were dismissed by the Supreme Court of Justice under the 1987 Amnesty Act. In 1992, the Inter-American Commission on Human Rights accused the Government of El Salvador of failing in its duty to investigate and punish those responsible for violations of the American Convention on Human Rights.

On the basis of various degrees of evidence, the Commission finds the following:

1. Colonel Elmer González Araujo, then Commander of Military Detachment No. 6 at Sonsonate, Major Oscar León Linares and Captain Carlos Alfonso Figueroa Morales (deceased) planned the operation in Las Hojas canton for the purpose of arresting and eliminating alleged subversives.

2. The orders of execution were transmitted to the actual perpetrators by then Second Lieutenants Carlos Sasso Landaverry and Francisco del Cid Díaz.

3. Colonel Gonzáles Araujo, Major León Linares and Captain Carlos Alfonso Figueroa Morales learnt immediately of the massacre, but covered it up.

4. Colonel Napoleón Alvarado, who conducted the Ministry of Defence investigation, also covered up the massacre and obstructed the judicial investigation.

5. The Commission on the Truth recommends that the Government of El Salvador comply fully with the resolution of the Inter-American Commission on Human Rights in this case.

DESCRIPTION OF THE FACTS 206/

The massacre

In the early morning of 22 February 1983, Captain Carlos Alfonso Figueroa Morales, commanding the Jaguar Battalion based in Military Detachment No. 6 at Sonsonate, mobilized three units from there belonging to the first company. One unit was under the command of Second Lieutenant Carlos Sasso Landaverry, one under the command of Second Lieutenant

Cadet Francisco del Cid Díaz and the third under the command of Sergeant José Reyes Pérez Ponce. 207/

At about 6 a.m., a unit entered the Las Hojas cooperative of the Asociación Nacional de Indígenas (ANIS). With the help of members of the local civil defence unit, who had scarves tied around their faces to conceal their identities, they arrested seven members of the cooperative. The soldiers had a list of alleged subversives and several members of the civil defence unit pointed out the people whose names were on the list. They were dragged from their houses, beaten and bound, then taken from the cooperative along the road towards the Cuyuapa river.

The members of the cooperative arrested were Gerardo Cruz Sandoval (34 years), 208/ José Guido García (21 years), 209/ Benito Pérez Zetino (35 years), 210/ Pedro Pérez Zetino (24 years), 211/ Marcelino Sánchez Viscarra (80 years), 212/ Juan Bautista Mártir Pérez (75 years) 213/ and Héctor Manuel Márquez (60 years). 214/

Another unit of about 40 soldiers entered the San Antonio farm in Agua Santa canton, near the Las Hojas cooperative, arrested a number of people and took them also towards the Cuyuapa river. 215/ The people arrested there included Antonio Mejía Alvarado, 216/ Romelio Mejía Alvarado, 217/ Lorenzo Mejía Carabante, 218/ Ricardo García Elena (19 years), 219/ Francisco Alemán Mejía (36 years), 220/ Leonardo López Morales (22 years), 221/ Alfredo Ayala 222/ and Martín Mejía Castillo. 223/

When the leader of ANIS, Adrián Esquino, was informed of the arrest of the members of the cooperative, he went immediately, at 7 a.m., to speak to Colonel Elmer González Araujo, 224/ Commander of Military Detachment No. 6 at Sonsonate. Colonel González Araujo told him he knew nothing about the arrest of the members of the ANIS cooperative, but that he knew that a number of subversives with the surname Mejía had been captured.

Later that morning, a group of ANIS members found 16 bodies on the banks of the Cuyuapa river; there were marks that showed that their hands had been tied, their faces were disfigured by bullets and they had all been shot at point-blank range in the forehead or behind the ear.

That same day, 22 February, Roberto Rogelio Magaña, the justice of the peace and experts examined the bodies. Alfredo Ayala's body still had "... his arms and forearms behind his back with the thumbs tied together with a piece of string ...". 225/ The other victims also showed signs of having had their thumbs tied together and had been riddled with bullets at point-blank range.

The official version

The operation was discussed and decided upon the previous day by Colonel González Araujo, Major Oscar León Linares, the commanding officer of the Battalion, and Captain Figueroa Morales, the Chief of S-2. According to their version, they were informed of the presence of subversives and the purpose of the operation was to search the area.

Later, Captain Figueroa Morales said that during the operation he heard shots coming from up ahead. 226/ When he arrived at the Cuyuapa river, the two Second Lieutenants informed him that there had been a clash with guerrillas. They found a number of bodies there, but none of them were bound. 227/

Although in several depositions soldiers alleged that there had been a clash with guerrillas, none of them admitted to having witnessed such a clash and all of them said that they had only heard it.

After the clash, Captain Figueroa Morales made a report to Colonel González Araujo. 228/ Major León Linares also received reports on arriving at the Detachment at about 8 a.m.

The investigations

Three investigations followed. President Magaña ordered the newly established governmental Human Rights Commission to investigate the case. Thus, before the case went to the Attorney General's Office, family members were interviewed and a first account of the incident was drawn up.

The Minister of Defence, General José Guillermo García Merino, entrusted Colonel Napoleón Alvarado with investigating the case. Statements were taken from several witnesses as part of the investigation, but not from the two Second Lieutenants, Cid Díaz and Sasso Landaverry, who were in Morazán. 229/ According to the testimony of Captain Figueroa Morales, it was they who had headed the unit which took part in the alleged clash.

In April 1983, Colonal Alvarado determined that no proof had been found of the guilt of any member of the armed forces and that the deaths had occurred in a clash. He also expressed the view that the investigation by the Human Rights Commission had been biased. He added that the case had been politicized by enemies of the armed forces and that "... the armed forces cannot take any responsibility for what may happen to Mr. Adrián Esquino Lisco, since he ... it would appear, is protecting guerrilla elements within the association he heads". 230/

The judicial investigation followed a different course. In March 1984, on the basis of a recommendation by the Office of the Attorney General, 231/ the preventive detention of seven civil defence members and other members of the military escort was ordered, but the order did not extend to soldiers. 232/ However, in December 1984, the judge of Sonsonate First Criminal Court ordered a stay of proceedings and in July 1985, the criminal court approved the case's dismissal. It also determined that the law on complicity could not be applied to civil defence members without any proof as to the main perpetrators. It had been established only that the escorts had assisted the army in the arrest. However, the court did not indicate who the immediate perpetrators were. 233/

As to the dismissal of the case against Captain Figueroa Morales and Major Léon Linares, the court affirmed that there was not enough evidence to bring charges against them. 234/

In July 1986, through the intervention of the United States Embassy and with new evidence that soldiers had been involved, criminal proceedings were

reopened against a number of defendants, including Colonel González Araujo, Major León Linares and Captain Figueroa Morales. 235/

In March 1987, however, the judge of the Court of First Instance again dismissed the case; 236/ in august, the appeal court revoked his decision and ordered the case brought to trial. 237/

Colonel González Araujo then filed a remedy of habeas corpus with the Supreme Court, when it was not yet certain that the National Assembly would approve the Amnesty Act (27 October 1987). 238/ In July 1988, the Supreme Court held that the Amnesty Act should apply to the Las Hojas case, and dismissed the case against all the defendants. 239/

Resolution of the Inter-American Commission on Human Rights on the application of the 1987 Amnesty Act in the Las Hojas case

The Inter-American Commission on Human Rights received a petition in 1989 240/ denouncing the application of the 1987 Amnesty Act as a violation of the obligation of the Government of El Salvador to investigate and punish the violations of the rights of the Las Hojas victims and to make reparation for the injury caused. 241/ On 24 September 1992, the Commission issued a resolution in which it determined that the amnesty decree adopted after the order to arrest officers of the armed forces had legally foreclosed the possibility of an effective investigation, the prosecution of the culprits and appropriate compensation for the victims. 242/

The Commission stated that the Government of El Salvador had failed in its obligation to guarantee the free and full exercise of human rights and fundamental guarantees for all persons under its jurisdiction. 243/ It further recommended that the Government of El Salvador should: (1) conduct an exhaustive, rapid, complete and impartial investigation of the facts in order to identify all the victims and the culprits and bring the latter to justice; (2) take the necessary steps to prevent the occurrence of similar incidents in future; (3) make reparation for the consequences of the situation and pay fair compensation to the victims' families. 244/

The Commission gave the Government of El Salvador three months in which to implement its recommendations, i.e., up to 24 December 1992. So far, no action has been taken to comply with the Commission's recommendations.

FINDINGS

The Commission finds the following:

1. There is substantial evidence that Colonel Elmer González Araujo, then Commander of Military Detachment No. 6 at Sonsonate, Major Oscar León Linares and Captain Figueroa Morales (deceased) planned the operation in Las Hojas canton for the purpose of arresting and eliminating alleged subversives.

2. There is full evidence that Captain Figueroa Morales, as captain of the Jaguar Battalion, was in command of the operation. Also, that during the operation, 16 peasants were arrested, bound and summarily executed, and that there was no clash with guerrillas.

3. There is substantial evidence that the orders of execution were transmitted to the actual perpetrators by then Second Lieutenants Carlos Sasso Landaverry and Francisco del Cid Díaz.

4. There is substantial evidence that Colonel González Araujo, Major León Linares and Captain Figueroa Morales, learnt immediately of the massacre but covered it up.

5. There is sufficient evidence that Colonel Napoleón Alvarado, who conducted the Ministry of Defence investigation, also covered up the massacre and later obstructed the judicial investigation.

6. The Commission on the Truth recommends that the Government of El Salvador comply fully with the resolution of the Inter-American Commission on Human Rights in this case.

(g) SAN SEBASTIAN

SUMMARY OF THE CASE

On 21 September 1988, members of the Jiboa Battalion detained 10 people in San Francisco canton in the district of San Sebastián. That same morning, Major Mauricio Jesús Beltrán Granados, chief of the Intelligence Department of the Fifth Brigade, under orders from Colonel José Emilio Chávez Cáceres, Chief of the Fifth Brigade, arrived at San Francisco canton. After interrogating several of the detainees, he ordered all 10 of them executed and the staging of a fictitious ambush.

In March 1989, an Honour Commission of the armed forces conducted an investigation in which members of the Jiboa Battalion said that Major Beltrán Granados had ordered them to execute the detainees and cover up the incident. Beltrán Granados, another officer and other non-commissioned officers and soldiers were brought before the judge, who ordered their detention. They were then released, except for Beltrán who is awaiting judgement.

The Commission on the Truth finds the following:

1. Colonel José Emilio Chávez Cáceres gave the order to execute the detainees.

2. Major Mauricio de Jesús Beltrán Granados ordered members of the Jiboa Battalion to execute the 10 detained peasants.

3. Colonel José Emilio Chávez Cáceres covered up the execution of the 10 detainees and Major Mauricio de Jesús Beltrán Granados took steps to cover up the execution.

4. Second Lieutenant Arnoldo Antonio Vásquez Alvarenga transmitted Major Beltrán's order to designate some soldiers to finish off the victims and also provided the necessary materials to activate the mines which seriously wounded them.

5. Sergeant Jorge Alberto Tobar Guzmán activated the mechanism that detonated the mines, knowing that they would explode in the place where the detained peasants were.

6. Deputy Sergeant Rafael Rosales Villalobos and soldiers Fermín Cruz Castro, José Carlos Hernández Matute, José Alfredo Méndez Beltrán and Francisco Ponce Ramírez shot and killed the detainees.

7. Colonel Luis Mariano Turcios and Lieutenant Colonel José Antonio Rodríguez Molina knew about the order to execute the detainees and did nothing to prevent their execution.

8. The Honour Commission of the armed forces, the Commission for the Investigation of Criminal Acts and the judge of the Criminal Court of First Instance of the city of San Sebastián failed to take steps to determine the responsibility of Colonel José Emilio Chávez Cáceres, Colonel Luis Mariano Turcios and Lieutenant Colonel José Antonio Rodríguez Molina.

DESCRIPTION OF THE FACTS 245/

The executions

On 20 September 1988, the second company of the Jiboa battalion of the Fifth Brigade arrived in the municipality of San Sebastián in the Department of San Vicente. Lieutenant Manuel de Jesús Gálvez Gálvez, commander of the unit, was informed that four men were involved in subversive activities. He ordered Second Lieutenant Arnoldo Antonio Vásquez Alvarenga to go to San Francisco canton and detain them.

Second Lieutenant Vásquez Alvarenga detained one of these men that same night. The detainee took the soldiers to a place where they found subversive propaganda, explosive devices, rucksacks, wire and two M-16 rifles. 246/

Second Lieutenant Vásquez Alvarenga informed Lieutenant Gálvez Gálvez of the find. 247/ Captain Oscar Armando Peña Durán heard the information on the radio and transmitted it to the Fifth Brigade. Early next morning, over the Cerro Las Delicias radio relay station, Captain Peña Durán was ordered to "eliminate" the detainee. Captain Peña Durán said that his officers (Gálvez and Vásquez) could not obey that order. He then informed Gálvez Gálvez of the order, and the latter also refused to carry it out. Gálvez told him that if the order was repeated, the Brigade should be requested to give the order in writing.

During the night, Second Lieutenant Vásquez Alvarenga continued to interrogate the detainee and the latter agreed to point out the house of the other three suspects. 248/ All of them were subsequently detained.

The four detainees were taken to the village school. Second Lieutenant Vásquez received a message over the radio from Lieutenant Gálvez informing him that he would come to San Francisco canton and telling him to assemble the residents of the canton in the school. 249/

At 7.30 a.m. on 21 December, Lieutenant Gálvez arrived and interrogated one of the detainees again. 250/ He again contacted Captain Peña and told him that he would not kill the detainees without a written order from the Commander of the Brigade. 251/ The Commander of the Fifth Brigade, and of the Fifth Military Zone, was Colonel José Emilio Chávez Cáceres. Peña requested permission to go to the Brigade and explain the situation in San Francisco. Major Beltrán Granados refused permission. 252/ He added that he would go to San Francisco canton with two interrogators. Peña Durán then contacted Gálvez Gálvez to inform him that Major Beltrán was coming, and told him to make a report to him. 253/

On the morning of 21 September, under orders from Colonel Chávez Cáceres, Major Beltrán went to San Francisco canton. He arrived the same morning, with two other interrogators and his assistant.

Captain Peña Durán, for his part, arrived at the Brigade 254/ at midday. He reported to Major Rodríguez, informing him of what had happened and of the order to eliminate the detainee. According to Captain Peña, Major Rodríguez said that the detainee should be taken to Brigade headquarters, in accordance with the procedure for normal operations. The two of them informed Lieutenant Colonel Turcios of the situation and of the order to eliminate the detainee. Peña then gave the same report to Colonel Chávez Cáceres. According to Chávez Cáceres, he told Peña that the detainee should be transferred to the Brigade. 255/

When Major Beltrán Granados arrived in the canton, Gálvez Gálvez made a report to him. 256/ Beltrán had three detainees brought out for interrogation. On his return from the interrogation, Major Beltrán, who as intelligence officer was not in command of the unit, informed Lieutenant Gálvez Gálvez that they had to execute the detainees. Gálvez Gálvez replied that he would not obey that order and that he would hand over command of the unit that was carrying out the operation to Major Beltrán. 257/

Beltrán Granados told Gálvez to order the detention of other persons, which he did. The total number of detainees increased to 10. 258/ Then, according to testimony, Major Beltrán Granados gave the order to execute them by simulating a guerrilla ambush. 259/

Major Beltrán Granados ordered Sergeant Tobar Guzmán to look for a place down in the street in which to lay the confiscated mines to prepare an ambush. 260/ Tobar laid the mines and connected the wire to them. 261/

Second Lieutenant Vásquez ordered the soldiers to take the rest of the confiscated material to the site of the ambush. Second Lieutenant Vásquez told soldiers "Churute" (Fermín Cruz Castro), Matute (José Carlos Hernández Matute) and "Ciguanabo" (José Alfredo Méndez Beltrán) that they would finish off any detainee who was left alive. 262/

The detainees' hands were tied behind their backs (except for the women) and they were blindfolded. At about 3 p.m., they were taken to the place where they were to be executed, on the road. Vásquez gave a battery to Tobar, who installed it and activated the mines. 263/

Some soldiers shot off their weapons to simulate an ambush, as ordered by Major Beltrán. 264/ The gunfire lasted five minutes. Since the detainees did not die as a result of the mines, Major Beltrán ordered some soldiers to finish them off. One of them, Manuel de Jesús Herrera Rivera, refused to obey the order. Soldiers "Churute" (Fermín Cruz Castro), "Balazo" (Francisco Ponce Ramírez) and Matute (José Carlos Hernández Matute) finished off the detainees. 265/

Major Beltrán Granados ordered Deputy Sergeant Rosales Villalobos to shoot the detainees, and he did so. He also ordered a soldier to take the blindfolds off the bodies and ordered soldier Hernández Alfaro to smear blood on the uniform of soldier Méndez Beltrán ("Ciguanabo") and put a dressing on him to make it look as if he had been wounded in combat.

Major Beltrán then ordered Lieutenant Gálvez Gálvez to inform the Brigade that terrorists had ambushed them and that eight detainees and two terrorists had been killed, and to request a helicopter to transport a wounded soldier. 266/

A helicopter arrived with a lawyer from Department 5 of the Brigade and a United States adviser. Beltrán got into the helicopter with the allegedly wounded soldier and they went to Brigade headquarters.

The cover-up and the official investigations

The next day, the San Sebastián justice of the peace identified the murdered peasants and COPREFA reported that 10 subversives had died in a clash between troops of the Jiboa Battalion and guerrillas. On 23 September, COPREFA published the version that Colonel Chávez Cáceres says he received from Major Beltrán Granados.

Officials from non-governmental human rights bodies (Legal Protection and the non-governmental Human Rights Commission) and journalists went to San Francisco canton on 22 September. A number of witnesses reported that the peasants had been murdered by the soldiers. In public statements, President Duarte refuted the accusations.

General Blandón, Chief of Staff, communicated with Colonel Chávez Cáceres on 23 September and told him that the version of the incident he had been given was untrue.

On 24 September, Major Beltrán Granados learnt that a soldier called Escoto had been wounded by guerrillas. He suggested to Escoto that he pretend to have been wounded at San Francisco on 21 September, so as to help them find a way out of the problem. Two days later, he presented him to the other members of the second section of the second company of the Jiboa Battalion and told them that they should say that Escoto had been at San Francisco on 21 September and that he had been wounded there. Escoto was then presented as having been at San Francisco that day. 267/

On the night of 26 September, Major Beltrán Granados assembled the officers, non-commissioned officers and soldiers who had been at San Francisco. He indicated the places where each of them had been when they left San Francisco

canton and said that was the version they should give. Later, there were other meetings to remind the soldiers what they had to say.

On one occasion, Second Lieutenant Vásquez Alvarenga took the soldiers to San Francisco canton and placed each soldier in the position that had been indicated to him, so that each soldier would recognize his position and not forget what he had to say.

On 27 and 28 September, members of the Commission for the Investigation of Criminal Acts interviewed Major Beltrán, Lieutenant Gálvez, Second Lieutenant Vásquez and the non-commissioned officers and soldiers. They all adhered to the cover-up version.

Some days later, lawyers Paredes and Parker of the Ministry of Defence and of the General Staff, respectively, interrogated the personnel of the Fifth Brigade who had been in San Francisco canton. All of them kept to the version of an ambush. An investigator administered lie detector tests. The results showed that some people were giving "dubious" replies. The lawyers then drew up a report which Chávez Cáceres sent to the General Staff and the Ministry of Defence.

Nine days after the incident, a member of the Jiboa Battalion told Colonel Chávez Cáceres that Major Beltrán had ordered the execution of the detainees and that they had been murdered. On 5 October, the corpses were exhumed and the forensic analysis revealed that the peasants had died after being shot at close range and not during combat. 268/

On 29 October 1988, the Commander of the Fifth Brigade announced at a press conference that the detainees had died in an ambush and that the guerrillas had returned during the night and mutilated the bodies to make it look as if they had been executed at close range.

Between 8 and 10 December 1988, investigators from the Commission for the Investigation of Criminal Acts again interrogated the officers, non-commissioned officers and soldiers. All of them kept to the cover-up version.

On 3 February 1989, United States Vice-President Dan Quayle visited El Salvador and called for the punishment of those responsible for the San Sebastián massacre. He handed over a list of three officers who were implicated: Colonel Chávez Cáceres, Major Beltrán Granados and Second Lieutenant Vásquez Alvarenga.

Some days later, Colonel Chávez Cáceres left the Brigade and Lieutenant Colonel Turcios was put in command. The other officers were then relieved of their duties. Lieutenant Gálvez Gálvez was held at Treasury Police headquarters, along with Second Lieutenant Vásquez Alvarenga.

In the course of February and March 1989, the military personnel who had been in San Francisco canton were questioned again. With the exception of Major Beltrán Granados, all of them abandoned the version of an ambush and said that Major Beltrán had ordered the execution and also the cover-up version of the incident.

The Commission for the Investigation of Criminal Acts identified Major Beltrán Granados as having ordered the executions and Second Lieutenant Vásquez Alvarenga, Sergeant Tobar Guzmán, Deputy Sergeant Rosales Villalobos, Corporal Ayala Arias and soldiers Cruz Castro, Hernández Matute, Mendéz Beltrán and Ponce Ramírez as having been responsible for carrying them out. 269/

Colonel Chávez Cáceres was not summonsed to make a statement or accused of or held responsible for any act or omission.

The judicial proceedings

The results of the investigations were sent to the judge of the Court of First Instance of San Sebastián on 11 March 1989. 270/ The judicial detention of nine people was ordered. 271/ In February 1990, the judge released all of them except Major Beltrán 272/ and Deputy Sergeant Rosales Villalobos. 273/

In May 1990, the court of San Vicente confirmed the judgement ordering the detainees' release and revoked the decision to bring Deputy Sergeant Rafael Rosales Villalobos to trial. 274/

As of the date of drafting of this report, Major Beltrán was still in prison awaiting the public hearing.

FINDINGS

The Commission finds the following:

1. There is sufficient evidence that Colonel José Emilio Chávez Cáceres gave the order to execute the detainees.

2. There is full evidence that Major Mauricio de Jesús Beltrán Granados ordered members of the Jiboa Battalion to execute the 10 detained peasants.

3. There is substantial evidence that Colonel José Emilio Chávez Cáceres covered up the execution of the 10 detainees, and full evidence that Major Mauricio de Jesús Beltrán Granados took steps to cover up the execution.

4. There is substantial evidence that Second Lieutenant Arnoldo Antonio Vásquez Alvarenga transmitted the order from Major Beltrán Granados to designate some soldiers to finish off the victims and sufficient evidence that he provided the necessary materials to activate the mines which seriously wounded the victims.

5. There is substantial evidence that Sergeant Jorge Alberto Tobar Guzmán activated the mechanism that detonated the mines, knowing that they would explode in the place where the detained peasants were.

6. There is substantial evidence that Deputy Sergeant Rafael Rosales Villalobos and soldiers Fermín Cruz Castro, José Carlos Hernández Matute, José Alfredo Méndez Beltrán and Francisco Ponce Ramírez shot and killed the detainees.

7. There is sufficient evidence that Colonel Luis Mariano Turcios and Lieutenant Colonel José Antonio Rodríguez Molina knew about the order to execute the detainees and did nothing to prevent their execution.

8. There is substantial evidence that the Honour Commission of the armed forces, the Commission for the Investigation of Criminal Acts and the judge of the Criminal Court of First Instance of the city of San Sebastián failed to take steps to determine the responsibility of Colonel José Emilio Chávez Cáceres, Colonel Luis Mariano Turcios and Lieutenant Colonel José Antonio Rodríguez Molina.

(h) ATTACK ON AN FMLN HOSPITAL AND EXECUTION OF A NURSE

SUMMARY OF THE CASE

On 15 April 1989, air force units attacked an FMLN mobile hospital. 275/ Five of the 15 people in the hospital were killed: three Salvadorians - Juan Antonio (a patient), Clelia Concepción Díaz (a literacy instructor) and María Cristina Hernández (a nurse and radio operator) - and two foreigners: José Ignacio Isla Casares (an Argentine doctor) and Madeleine Marie Francine Lagadec (a French nurse).

A Salvadorian air force unit attacked the hospital. Members of that unit deliberately attacked the medical staff in violation of international humanitarian law and captured the French nurse Madeleine Lagadac alive and executed her. Since no autopsies were performed on the other persons killed, it was not possible to ascertain with the same degree of accuracy whether they too were executed.

DESCRIPTION OF THE FACTS

The attack

According to witnesses, at about 7 a.m. or 8 a.m. on 15 April 1989, two low-flying A-37 aircraft bombed the area surrounding an FMLN mobile hospital located near the Catarina farm in El Tortugal canton, San Ildefonso district, Department of San Vicente. Three UH 1M helicopter gunships, a Hughes-500 helicopter and a "Push-Pull" light aeroplane took part in the attack. A few minutes later, six helicopters carrying paratroopers armed with M-16 rifles arrived on the scene. At 8.15 a.m., the helicopters dropped the troops near the hospital. The bombardment lasted 15 minutes.

Fifteen people were in the hospital when the attack started. Most of them started to escape; one of the patients returned the attackers' fire before fleeing. María Cristina Hernández, a nurse and radio operator, and Juan Antonio, one of the hospital's patients, were seriously injured in the attack.

Madeleine Lagadec, a French nurse who had been working with FMLN for three years, refused to run away and stayed behind to attend to María Cristina. José Ignacio Isla Casares, the Argentine doctor in charge of the hospital, and Clelia Concepción Díaz Salazar, the literacy instructor, also stayed behind.

Those who escaped witnessed what happened next. The soldiers closed in and the radio operator for the group of paratroopers informed his commanding officer that "mercenaries" had been captured and requested instructions. The soldiers then questioned the three captives and screams were heard, the loudest being those of Madeleine Lagadec. Next, some shots rang out. The soldiers left that afternoon. 276/

There is substantial evidence that the operation was carried out by a group belonging to the "Special Operations" unit of the Salvadorian air force (paratroopers backed by artillery and aircraft fire). They were part of

"Operación Rayo", designed to destroy the logistical and command structure of the Partido Revolucionario de Trabajadores Centroamericanos (PRTC) in the area.

The investigation

On 17 April, a COPREFA communiqué was published announcing that nine people had died in an army attack on a PRTC command post. It also reported that weapons and medical equipment had been seized. 277/

That same day, FMLN members found the bodies at the scene. According to two of them, only Madeleine Lagadec's torso was clothed, her trousers had been pulled down to the knees, she did not have any underwear on under them 278/ and her left hand had been severed at the wrist. There were bullet holes in the skulls of the five bodies. 279/

The autopsy

An autopsy was performed only on the French nurse, in France on 2 May 1989. 280/

The autopsy found at least five gunshot wounds on Madeleine Lagadec. Two wounds - to the head and in the left shoulder blade region - were potentially lethal. The wounds were significant for the small calibre of the bullets used (between 5 and 6 mm) and their considerable destructive power, for which the only possible explanation is great velocity. No precise explanation was found for the amputation of the left hand. The French doctors said that the diversity of the trajectory of the projectiles made the theory of an execution highly unlikely. 281/

However, Dr. Robert Kirschner, 282/ who analysed the autopsy reports written in France and the sketches and documentation in the possession of this Commission, concluded that Madeleine Lagadec had been executed. 283/

In the analysis he made for the Commission, Dr. Kirschner, one of the world's foremost analysts of summary executions, explained that "The wounds and their trajectories provide significant evidence of the manner in which Madeleine Lagadec was killed. There were six gunshot wounds of the body, including three to the chest, one in the medial aspect of each thigh, and one to the head. All of these wounds passed from front to rear, upward, and in a medial to lateral direction ... The pathologists who performed the autopsy were of the opinion that the diversity of the trajectory of the projectiles made it unlikely that this was an execution. I disagree with this conclusion. While the gunshot wounds to the chest might have occurred while the victim was standing, the wounds to the thighs almost certainly were inflicted while she was lying on the ground, and those of the chest are more consistent with having been inflicted while she was supine. Of special importance, the gunshot wound of the right temporal region of the head, which passed on a horizontal plane and exited from the left temporoparietal region of the scalp, was a characteristic coup de grace wound, and a trademark of the extrajudicial execution." 284/

Dr. Kirschner's conclusion that Madeleine Lagadec was executed is also supported in a separate analysis made by experts in electronic microscopy in France. 285/ They first ascertained that the victim had been shot when already

half-naked: "(...) there are no traces of bullets on the brassiere, briefs and trousers, while there are gunshot wounds to the right breast, the pelvis and the lower limbs (...) It can be deduced that the victim was not wearing those three items of clothing when the shots were fired." 286/

As for the distance from which the shots were fired, the above Centre puts forward two theories that contradict the assertion that Madeleine Lagadec's wounds were inflicted from a distance. 287/

FINDINGS

The Commission finds the following:

1. There is sufficient evidence that a unit of the Salvadorian air force attacked the field hospital, and substantial evidence that it deliberately attacked medical personnel in violation of international humanitarian law.

2. There is substantial evidence that members of the unit captured the French nurse Madelaine Lagadec alive and executed her.

3. The State of El Salvador failed in its responsibility to investigate the case, bring the culprits to trial and punish them. The Commission was unable to determine whether the other people were also executed, since no autopsies were performed on their bodies.

(i) GARCIA ARANDIGOYEN

SUMMARY OF THE CASE

On 10 September 1990, Dr. Begoña García Arandigoyen was summarily executed in the Department of Santa Ana. The Spanish doctor, who was 24 years old, died in an alleged clash between a patrol of the 4th Company BIC PIPIL of the Second Infantry Brigade of the armed forces of El Salvador and a column of the Ejército Revolucioniario del Pueblo (ERP) of FMLN.

The Commission finds the following:

1. Begoña García Arandigoyen was executed extrajudicially by troops of the 4th Company BIC PIPIL of the Second Infantry Brigade, under immediate command of Lieutenant Roberto Salvador Hernández García and the overall command of Army Lieutenant Colonel José Antonio Almendáriz, commanding officer of the Second Brigade.

2. The above officers covered up the crime with the collaboration of the National Police Third Command, Santa Ana unit, and the experts and judicial authorities who took part in the examination of the corpse of Begoña García.

DESCRIPTION OF THE FACTS 288/

The death

Dr. Begoña García Arandigoyen, a Spanish doctor, entered El Salvador in September 1989 to work as a doctor for FMLN. She was executed, following her arrest, on 10 September 1990 in the Department of Santa Ana by troops of the 4th Company BIC PIPIL of the Second Infantry Brigade.

According to the official version, a patrol which was conducting a search of the area to the south of the Santa Ana volcano, near the Montañita estate, clashed with FMLN troops at approximately 1 p.m. on 10 September on the La Graciela estate.

According to a statement by Army Lieutenant Colonel José Antonio Almendáriz Rivas, commanding officer and Chief of Staff of the Second Brigade, he was advised by radio when fire contact was made with the enemy and was later informed of the death of 10 guerrillas, including two women, one of whom was a foreigner. 289/

According to the official version, FMLN troops managed to retrieve the bodies of eight of the dead, and the troops of 4th Company BIC PIPIL found only the bodies of two women. One of them looked like a foreigner.

At nightfall, other soldiers transferred the bodies of the two women from the place where the events had allegedly occurred to the main building of the Malacara estate, in Potrero Grande Arriba canton, Santa Ana district.

On the morning of 11 September, Army Lieutenant Colonel José Antonio Almendáriz Rivas, COPREFA staff and members of the National Police Third Command, Santa Ana unit, under the command of Lieutenant Gilberto García Cisneros, arrived at the Malacara estate by helicopter. COPREFA staff photographed the bodies and, according to the official version, members of the Third Command performed paraffin tests to see whether the women had fired weapons. There was no judicial examination of the bodies. 290/ At the request of the military personnel, local residents proceeded to bury the bodies.

The official examination of the corpse

On 14 September, the corpses were exhumed and the body of Dr. Begoña García was examined by the forensic doctor on duty, Dr. Neftalí Figueroa Juárez, in the presence of the judge of the First Criminal Court of the Santa Ana judicial district, Oscar Armando Avilés Magaña. Those present included a representative of the Embassy of Spain and Lieutenant Colonel Almendáriz Rivas.

The examination report states that "[they] examined the corpse of BEGOÑA GARCIA ARANDIGOYEN, which has a destructive wound on the outer right-hand surface of the right forearm, with a total and displaced fracture, a destructive wound on the lateral surface of the right buttock and wounds on the outer surface of the right elbow and the left thigh. The corpse is rapidly decomposing, death having occurred at least four days ago, there is no evidence of tattooing, burns or powder marks around any of the above-mentioned wounds, from which it can be inferred that the wounds were inflicted from a distance.

The corpse was exhumed and the direct cause of death was hypovolemic shock resulting from multiple wounds." 291/

The autopsy in Spain

After the corpse of Begoña García had been transferred to Spain, the Pathology Department of Navarra Government Hospital performed a clinical autopsy. That autopsy, and the report by Dr. Carlos Martín Beristaín on the medical and forensic findings, 292/ established the following:

1. The corpse had multiple wounds, especially to the head, neck and upper and lower extremities.

2. There was a large wound on the left forearm, corresponding to a total fracture, which implied the use of a blunt instrument or the impact of a bullet.

3. There were two round bullet entry holes, from 2.4 to 3 cm in diameter, above both elbow joints, although no exit holes could be detected, the wounds being very selective and occurring only on the extremities and symmetrically on the arms, without other wounds on the thorax which could have been caused by a line of fire.

4. The wounds on the arms and the left thigh could have been made by a sharp bayonet-type instrument, since they were too large in diameter to have been caused by a firearm without being accompanied by greater destruction, other exit holes or the presence of bullets in the flesh.

5. An entry hole 1.8 cm in diameter in the lower central occipital region, the trajectory being upwards and forwards.

6. A round hole 2.5 cm in diameter at the base of the neck, just above the sternal manubrium.

7. Death must have occurred instantaneously as a result of the firearm wounds to the cranium, because of the destruction of vital nerve centres and not because of the bleeding which the wounds may have caused.

Dr. Beristaín's report notes that a biochemical analysis detected the existence of a large quantity of powder around the edges of the neck wound (above the sternal manubrium), confirming that the wound had been caused by a shot fired from a distance of a few centimetres. The bullet wounds in the occipital region and the sternal manubrium had similar characteristics and had been made from a distance of a few centimetres.

The report further notes that when the corpse was officially examined in El Salvador, neither of the two head wounds which were made from a distance of a few centimetres (in the nape of the neck and in the region above the sternum) was recorded.

Report by the expert of the Commission on the Truth

At the request of the Commission on the Truth, Dr. Robert H. Kirschner, a forensic pathologist, studied the examination made by Dr. José Neftalí Figueroa on 14 September 1990 and the clinical autopsy report from Navarra Hospital. In the opinion of Dr. Kirschner, the Navarra autopsy directly contradicts the El Salvador examination and supports the contention that Begoña García was captured and executed. Dr. Kirschner notes that the Navarra autopsy report describes wounds which are inconsistent with those occurring in combat and typical of those caused by execution, including the wound at the base of the cranium, fired from a gun almost in contact with the nape of the neck, and another in the upper chest, caused by a shot fired from a distance of a few centimetres.

FINDINGS

The Commission finds the following:

1. There is full evidence that Begoña García Arandigoyen was executed extrajudicially, in flagrant violation of international humanitarian law and international human rights law, by units of the Second Infantry Brigade under the immediate command of Lieutenant Roberto Salvador Hernández García and the overall command of Army Lieutenant Colonel José Antonio Almendáriz Rivas, commanding officer of the Second Brigade.

2. There is full evidence that the above officers covered up the crime.

3. There is full evidence of the responsibility of the judicial authorities, as shown by the actions of the judge of the First Criminal Court of the Santa Ana judicial district, Oscar Armando Avilés Magaña, and of the forensic doctor on duty, Dr. Neftalí Figueroa Juárez, who took part in the examination of the corpse of Begoña García and who omitted from the record the two gunshot wounds made at a distance of a few centimetres, thus failing in their duty to carry out a full and impartial investigation of the causes of her death.

(j) FENASTRAS AND COMADRES

SUMMARY OF THE CASE

In the early morning of 31 October 1989, persons unknown placed a bomb at the entrance to the offices of the Comité de Madres y Familiares de Presos Políticos, Desaparecidos y Asesinados de El Salvador Monseñor Oscar Arnulfo Romero (COMADRES) in San Salvador. Four people, including a child, were injured.

At midday, a bomb was placed in the offices of the Federación Nacional Sindical de Trabajadores Salvadoreños (FENASTRAS) in San Salvador. Nine people were killed and over 40 injured. As a result of the attack, FMLN decided to suspend peace negotiations with the Government.

The Commission on the Truth finds the following:

1. The bomb attacks on the offices of COMADRES and FENASTRAS on 31 October 1989 were part of a systematic pattern of attacks on the lives, physical integrity and freedom of members of those organizations.

2. The Government of El Salvador failed in its duty to guarantee the human rights to which the members of these organizations are entitled as individuals and as members of their organizations.

3. The attack on FENASTRAS was carried out using a bomb which persons unknown placed outside its offices.

4. The competent authorities of El Salvador did not carry out a full and impartial investigation of the attacks on the offices of COMADRES and FENASTRAS.

5. There is no countervailing evidence that FMLN or FENASTRAS members carried out the attack.

DESCRIPTION OF THE FACTS 293/

COMADRES is a non-governmental organization established to provide support for mothers and relatives of victims of politically motivated disappearances or murders. It was founded in December 1977 at the suggestion of Monsignor Oscar Arnulfo Romero.

FENASTRAS is an independent confederation formed in 1974 to strengthen trade unions and promote the interests of Salvadorian workers. It has 25,000 individual members and 16 member trade unions. It is the largest industrial trade union confederation in El Salvador. Its main office is located two blocks away from the National Police in San Salvador.

The attacks

In the early morning of 31 October 1989, two men in uniform allegedly placed a bomb at the entrance to the COMADRES offices in San Salvador. A large lorry was also reportedly heard leaving the scene moments later. Four people, including a child of four months, were injured. The National Police blamed the crime on the guerrillas. 294/

At approximately 12.30 p.m. the same day, a worker who was a member of FENASTRAS noticed someone propping a sack against the outside wall of the FENASTRAS cafeteria. He smelt gunpowder and ran inside to warn his companions. Another witness, a scrap dealer, noticed two young men entering FENASTRAS grounds through the door in the access wall. One of them was carrying a suitcase in a jute sack. Through the door in the wall, we saw one of them "crouch down as if he was setting light to something". As he came out, he shouted that they had planted a bomb and the two of them ran off northwards.

Outside, someone yelled "bomb!" and people began running. At that moment, the bomb exploded. The building was enveloped in smoke and powder and the offices were destroyed. More than 40 people were injured and the following were

killed: Ricardo Humberto Cestoni, trade unionist; Carmen Catalina Hernández Ramos, FENASTRAS cook; José Daniel López Meléndez, trade unionist; Julia Tatiana Mendoza Aguirre, trade unionist and daughter of a leader of the Frente Democrático Revolucionario (FDR) assassinated in 1980; Vicente Salvador Melgar, trade unionist; María Magdalena Rosales, student and daughter of a trade union leader; Rosa Hilda Saravia de Elias, FENASTRAS cook and trade union member; Luis Edgardo Vásquez Márquez, trade unionist; and Febe Elizabeth Velásquez, International Secretary of FENASTRAS and a member of the Executive Committee of the Unidad Nacional de Trabajadores Salvadoreños (UNTS).

FENASTRAS members and the main trade unions blamed the armed forces. UNTS accused the Ministry of Defence of "summarily executing" the workers in retaliation for an FMLN attack on the Armed Forces Joint Staff the previous day.

Background

These attacks on the offices of COMADRES and FENASTRAS occurred in a specific political and chronological context. It was common knowledge that the two organizations were critical of government policy, especially with regard to human rights violations, and that FENASTRAS was critical of governmental measures which, from its point of view, were detrimental to workers' interests. The armed forces considered FENASTRAS a "front" for FMLN. 295/

The security forces had several members of COMADRES and FENASTRAS, as well as their offices, under constant surveillance. The offices of the two organizations were raided repeatedly and their members were regularly threatened, harassed and detained by the authorities. 296/ On 22 February and 5 September, explosive devices were thrown at FENASTRAS headquarters. Hundreds of incidents of violence, persecution and threats against the two organizations have been reported.

In this political and chronological context, it should be noted that during October 1989, there had been a number of attacks against the army and against opponents of the Government. 297/ The day before the attacks on COMADRES and FENASTRAS, FMLN members had attacked the Armed Forces Joint Staff using explosive devices. 298/

The investigation of the attacks

Immediately after the attack on FENASTRAS, the Commission for the Investigation of Criminal Acts (CIHD), the judiciary and the National Police launched their respective investigations. The Second Justice of the Peace, Nelson Ulises Umaña Bojórquez, attempted to make a judicial inspection 299/ on 31 October. He was forced to abandon his efforts owing to "the congestion and commotion caused by the crowd which [was] present at the scene". 300/ CIHD experts arrived half an hour after the attack to make a visual inspection. Neither they nor staff from the Police Explosives Unit were able to gain access to the inside of the building. 301/

There are many doubts as to the seriousness and impartiality with which the investigations proceeded. That same day, CIHD representatives expressed the view that "the cause of the explosion was the mishandling of explosive materials

inside the building itself". 302/ Members of the Police Explosives Unit concluded that the attack "... formed part of the conspiracy to discredit the Government of El Salvador by making the national and international community believe that the attack was a government response to the artillery attack launched by FMLN on 30 October 1989 against the Armed Forces Joint Staff ... which leads us to conclude that FMLN carried out the attack against itself in order to confuse public opinion, making it believe that it was an act of revenge for the earlier attack".

The CIHD dossier suggests that its investigation was based on the conclusions of the investigation carried out by the Technical Assistance Department of the "Sargento Carlos Sosa Santos" Explosives and Demolition Unit of the National Police, which ruled out the possibility that the explosive device had been planted at FENASTRAS offices "by an unknown person unconnected with that organization, since a meeting was being held inside the building and it is possible that access to it was being monitored by FENASTRAS staff". 303/ One of the first steps taken by CIHD was to request the security forces "urgently" to provide any political or ordinary information on the people killed and injured in the explosion. 304/

In November 1989, at the request of President Cristiani, the United States Department of State sent FBI experts to inspect the site of the explosion at the FENASTRAS offices. 305/ In its report, the FBI concluded that the disturbance of the scene of the crime, the passage of time and the conditions in which the crime had occurred reduced the possibility of identifying the type of explosive used. 306/ It was able to determine only that a high-power explosive, weighing approximately 15 pounds, had been used, and that the explosion had occurred in the area between the access wall and the outside wall of the building itself. 307/

It has been heard that the Government allegedly pressured some detainees to blame FMLN for the attack or to issue false statements to the press.

FINDINGS

The Commission finds the following:

1. There is sufficient evidence that the bomb attacks on the offices of COMADRES and FENASTRAS on 31 October 1989 were part of a systematic pattern of attacks on the lives, physical integrity and freedom of members of those organizations.

2. There is full evidence that the Government of El Salvador failed in its duty to guarantee the human rights to which the members of these organizations are entitled as individuals and as members of their organizations.

3. There is full evidence that the attack on the FENASTRAS offices was carried out using a bomb which persons unknown placed outside the building.

4. There is substantial evidence that the competent authorities of El Salvador did not carry out a full and impartial investigation of the attacks on the offices of COMADRES and FENESTRAS.

5. There is no countervailing evidence that FMLN or FENASTRAS members might have carried out the attack.

(k) OQUELI AND FLORES

SUMMARY OF THE CASE

On 12 January 1990, Héctor Oquelí Colindres and Gilda Flores Arévalo were abducted in Guatemala City, Republic of Guatemala. Their bodies were found the same day in the village of San José El Coco in the Jalpatagua district of Guatemala, 5 kilometres from the border with El Salvador.

The facts of the killings are not in dispute. However, views differ as to who bears criminal and political responsibility.

Within the constraints imposed on it, the Commission made an exhaustive effort to determine who was responsible for the murders. It received some of the results of the investigations made by the Office of the President of the Republic of Guatemala, made inquiries with the authorities of that country, evaluated information supplied by the Government of El Salvador, studied the report prepared by Professors Tom Farer and Robert Goldman, and received some relevant testimony.

Having analysed the information available, it can say with certainty that members of the Guatemalan security forces, acting in conjunction with Salvadorians, took part in the crime.

It also notes that the incident was not properly investigated and that some essential procedures were omitted.

The Governments of Guatemala and El Salvador must make a thorough investigation of this double murder.

DESCRIPTION OF THE FACTS

Background

Héctor Oquelí, a leader of the Movimiento Nacional Revolucionario (MNR) of El Salvador, 308/ enjoyed tremendous national and international prestige and had been active for many years in the Socialist International. 309/ He was widely regarded as the likely successor to MNR leader Guillermo Ungo. 310/

Gilda Flores Arévalo, a citizen and resident of Guatemala, was actively involved in the Partido Socialista Democrático (PSD).

The murder occurred shortly after the biggest military offensive of the Salvadorian conflict, launched by FMLN in November 1989.

The fact that Héctor Oquelí was an opposition politician in El Salvador and the outrage which this crime prompted make this case a serious act of violence falling within the Commission's mandate, regardless of the place where the incident occurred.

Some considerations

After the Government of President Vinicio Cerezo came to power in Guatemala, some opponents of the Salvadorian regime, including Oquelí, began to engage in low profile political activities on Guatemalan territory. 311/

As a member of MNR, Oquelí had returned to El Salvador and was publicly active in politics. In November 1989, during an FMLN offensive, he took refuge in the Venezuelan Embassy. He then moved to Mexico, where he continued his political activities within the Socialist International.

The facts

On 11 January 1990, Oquelí was travelling from Mexico to Nicaragua to take part in a Socialist International meeting in Managua. He planned to make a one-day stopover in Guatemala and leave the next day for Managua.

The reason for this stopover was to hold a political meeting with Mr. René Flores, a member of the same political group as Oquelí. René Flores travelled from San Salvador specifically to meet with Oquelí. Oquelí also planned to visit Gilda Flores in Guatemala.

On 11 January, Oquelí arrived in Guatemala City. In the international arrivals area, he met up with René Flores, who was arriving on a flight from San Salvador.

Oquelí went through immigration control without a problem. Two immigration officials then came up to him and asked him to show his passport again, on some administrative pretext, and detained him for over half an hour. Because of this, Oquelí was unable to leave the baggage area or go through customs because he did not have his passport. Gilda Flores and René Flores were waiting for him outside and could not understand why he had been delayed.

Oquelí's passport was new and absolutely in order and there was no reason why it could not be checked simply by looking at it. However, when the immigration officials returned it to him, they wrote in by hand over the date on the entry stamp the instruction "read this".

Once outside, Oquelí met up with René Flores and Gilda Flores. They talked about the passport episode that had occurred in the baggage area and drove to the home of Gilda Flores.

As they were leaving the airport, they noticed that some people who looked like plain clothes policemen were watching them, but nothing happened as they drove into the city.

When they reached Gilda Flores' home, there were some people they did not know outside but since there was a foreign embassy there they did not see anything significant in this.

Once inside the house, Oquelí made a number of telephone calls. He and René Flores talked about the overall political situation in El Salvador and René Flores gave him some documents.

Gilda Flores and Oquelí then took René Flores to the airport. René Flores told the Commission on the Truth that he had been surprised that they went with him to the airport, as there was no need for this and it was not in line with the security measures that Oquelí always scrupulously observed.

Gilda Flores invited Héctor Oquelí to have dinner at her home. The maid left when dinner was over. Next morning, Flores and Oquelí set out early for the airport for Oquelí to take a plane to Managua. Gilda Flores was driving.

At approximately 5.45 a.m., on the Avenida Sexta in Zona Nueve, they were intercepted by a private vehicle from which a group of people got out. 312/ Oquelí, who was in the front passenger seat, tried to escape but was overpowered. He and Gilda were forced into the vehicle which had intercepted them.

Luis Ayala, the General Secretary of the Socialist International, and people at the International's meeting in Managua, began to wonder why Oquelí had not arrived.

That same day, Guatemalan police went to the scene of the abduction and found papers in the vehicle abandoned on the street establishing that the vehicle belonged to Gilda Flores. That morning, a complaint had been lodged with the police that two individuals had violently stolen a vehicle from a Guatemalan citizen in Guatemala City. In doing so, the assailants had identified themselves as members of the police. 313/ The vehicle turned out to be the same one in which the bodies of Oquelí and Flores were found later. There were bullet wounds in the bodies and they appeared to have been injected with an unidentified substance. 314/

At 5 p.m. the same day, 12 January, the two bodies were found in a vehicle abandoned on the main road to the border with El Salvador. Héctor Oquelí's papers were in his clothing.

Subsequent events

The Guatemalan authorities concluded on the spot that the body was indeed that of Héctor Oquelí Colindres. The body of Gilda Flores was identified by members of her family.

President Cerezo ordered an investigation of the case. The result of these investigations was the so-called "Third Report". The report made no findings and assigned no responsibilities, but simply set forth a number of theories, on which the Guatemalan Government had based its investigation, as to the possible motives for the crime. The investigation went nowhere, even though the report itself maintained that intelligence services obtained information that persons with ties to the activities of Salvadorian terrorist groups in recent years might be operating in Guatemala. Among the names obtained were those of Francisco Ricardo de Sola and Orlando de Sola. Although there is no definite evidence linking them to the crime, the investigation found that they were in Guatemala on the exact days on which the abduction and murder took place. 315/ The report added that "information was found pointing to Infantry Colonel Mario Denis Morán Echeverría of the Salvadorian army, El Salvador's Military Attaché in Guatemala, as someone whose background gave grounds to

suspect that he might be providing a cover for clandestine terrorist groups coming from El Salvador. 316/

Reacting to the report, the Salvadorian Government claimed that Salvadorian citizens had been implicated without grounds. President Cristiani ordered the Attorney General of the Republic to launch an investigation. However, this investigation did not yield any results either.

At the request of the Socialist International, Professors Tom Farer and Robert Goldman, human rights experts, evaluated the action taken by the Guatemalan Government. The Farer-Goldman report found that the deficiencies of the Government's reports were so obvious that one could conclude that the investigation had been meant to fail. 317/

The Oquelí-Flores case is still awaiting a judicial resolution in both El Salvador and Guatemala.

Analysis

The Commission interviewed a considerable number of people who had been close to Oquelí, both members of his family and political contacts, and made all kinds of inquiries in order to obtain more precise information on the official investigations made in Guatemala and El Salvador. It had access to information about many of the possible motives for the double murder. Unfortunately, the most important information needed to conduct an in-depth investigation and answer some of the questions which were suggested to the Commission as a basis for its work could not be substantiated when the Commission requested that it be given access to all the information gathered by the Salvadorian Government on the Oquelí-Flores case. The reluctance in both Guatemala and El Salvador to give the Commission access to the information it requested during its investigation imposed serious constraints on it.

In this case, the facts are documented and the characteristics of the abduction and murder of Héctor Oquelí and Gilda Flores are not in question. However, neither those who planned the double homicide nor those who carried it out have been identified.

It was never made clear why the Guatemalan authorities had detained Oquelí at the airport and confiscated his passport for over half an hour. Nor was the liquid injected into the victims before their death identified. The records of persons entering and leaving the country were not checked - not even the records of the frontier post that was five kilometres away from the place where the bodies were found. No statement was taken from anyone whose testimony was decisive for shedding light on the facts and no one took the fingerprints left on the vehicles. Lastly, there was no investigation of the fact that the individuals who stole the car used for the crime identified themselves as police.

The dossier does not contain any new information other than letters and reports from police units and purely procedural judicial documents.

The Commission requested all existing information on this case from the highest level of the Government of the Republic of Guatemala. 318/ Despite the

latter's pledge to cooperate in the Commission's work, no relevant information was received. 319/

The Office of the Attorney General of the Republic of El Salvador provided the Commission with a copy of the dossier of the investigation made at the request of President Cristiani. In fact, the dossier is nothing more than a compilation of press clippings on the case. 320/ Moreover, the Office of the Attorney General did not interview the Salvadorians named in the "Third Report", some of whom were public officials in El Salvador.

Among the theories as to possible motives for the crime is the fact that Héctor Oquelí was an international political figure. This is the theory underlying the Guatemalan Government's "Third Report", which speculates that the killers could have been from the most radical sectors of FMLN, the Guatemalan army, the Salvadorian authorities or the Salvadorian extreme right wing.

MNR provided the Commission with the original of a military identity card, belonging to a major René Grande Martínez, which had been handed over to it by President Vinicio Cerezo and which the Guatemalan authorities had apparently found at the scene of the murder.

The Ministry of Defence did little to respond to the request by the Commission on the Truth that it locate Major Grande Martínez. The Commission summoned him repeatedly but he never came to testify.

The Commission determined that the most important features of this murder were: (a) that the murderers knew beforehand that Oquelí would be in Guatemala; (b) that Oquelí was detained at the airport by authorities; (c) that his movements were constantly watched; (d) that persons claiming to be police stole the vehicle in which the bodies were later found; (e) that Oquelí was abducted in Guatemala City in broad daylight in the middle of the street; (f) and that the murderers were able to drive without incident from the capital city to the border with the two victims in a stolen car. All of this makes it absolutely clear that the Guatemalan authorities must have collaborated with or tolerated these crimes.

FINDINGS

1. The Governments of Guatemala and El Salvador have not done enough to thoroughly investigate the reasons for the murder of Héctor Oquelí Colindres and Gilda Flores or to find out who was responsible. The Commission on the Truth urges the two Governments separately to order the necessary action to clear up the crime and jointly, with the cooperation of such international bodies as are able to help them clarify this tragic event, to provide the international community with information establishing what happened, without prejudice to the corresponding judicial action.

2. The Commission believes that there is a direct link between the following facts: the fact that Héctor Oquelí Colindres and Gilda Flores Arévalo were members of their countries' political opposition; the fact that Oquelí was inexplicably detained by Guatemalan authorities at the airport; the fact that the home of Gilda Flores was being watched; the subsequent abduction and murder

of Oquelí and Flores; and alleged police involvement in the theft of the car in which the bodies were found.

3. The Commission has found sufficient evidence that members of the Salvadorian security forces, acting in conjunction with or tolerated by Guatemalan security forces, were responsible for the murders.

4. There is sufficient evidence that the Salvadorian authorities did not investigate this crime properly. There is also sufficient evidence that the investigations made by the Guatemalan authorities were deficient and that the omission of basic evidence, even if not intended as a cover-up, had that effect.

3. ENFORCED DISAPPEARANCES

(a) VENTURA AND MEJIA

SUMMARY OF THE CASE

Francisco Arnulfo Ventura and José Humberto Mejía, law students at the University of El Salvador, were arrested by members of the National Guard in the parking lot of the United States Embassy on 22 January 1980 after a student demonstration. According to witnesses, members of the National Guard handed the students over to some men in civilian clothing who drove off with them in a private car. Despite the judicial investigations and remedies carried out since that date, the students' whereabouts are still unknown.

The Commission made the following findings:

1. Members of the National Guard arrested Francisco Arnulfo Ventura and José Humberto Mejía, detained them in the parking lot of the United States Embassy and then handed them over to some men in civilian clothing who drove off with them in a private vehicle.

2. While in the custody of those men, the students disappeared and there is no evidence that they are still alive.

3. By denying that the students had been arrested and failing to act quickly to investigate the incident and identify precisely who was responsible, then Colonel Eugenio Vides Casanova, Commander of the National Guard, was guilty, at the least of complicity through negligence and of obstructing the resulting judicial investigation.

4. The State failed in its duty to investigate, bring to trial and punish the guilty parties, compensate the victims' relatives and inform them of the whereabouts of the disappeared persons. The State must comply fully and promptly with these obligations.

DESCRIPTION OF THE FACTS 321/

On the morning of 22 January 1980, a student demonstration which had marched from the University of El Salvador to the centre of San Salvador was violently dispersed by security forces in front of the cathedral; a number of people were killed or injured. 322/

Two of the demonstrators, Francisco Arnulfo Ventura Reyes (age 24) and José Humberto Mejía (age 25), both law students, went through the main entrance of the United States Embassy after the demonstration, at about 2.30 in the afternoon.

According to a number of witnesses, members of the National Guard arrested them at the Embassy gate and took them into the parking lot, where they stayed for a few minutes in the custody of the National Guard. Shortly afterwards, a private car 323/ entered the Embassy parking lot and the National Guard handed the students over to some men in civilian clothing who put them in the car boot and drove off. That was the last that was seen of the students.

The investigation

The same afternoon, a relative of Francisco Ventura went looking for him. Near the cathedral, a number of people told him that they had heard that Francisco Ventura and José Humberto Mejía had been arrested in front of the United States Embassy by guards. The next day, he received confirmation of this information when he went to the Asociación General de Estudiantes Universitarios Salvadoreños (AGEUS).

At the request of AGEUS, Mr. Santiago Orellana Amador and Mr. Florentín Menéndez were appointed to file writs of habeas corpus for the two students. According to their judicial statements, they spoke to Mr. Vytantos A. Dambrava, Director of the International Communications Agency of the United States Embassy, and to the Embassy's chief of security. Both Embassy officials said that they had known about the students' arrest and that the United States Marines had not been involved. They also said that the members of the National Guard who had been guarding the Embassy had brought the students into the courtyard to search them, and had kept them there. They added that, shortly afterwards, the two young men had been taken out of the Embassy. Mr. Dambrava said that they had been taken away by members of the National Guard, 324/ while the chief of security said that men in olive drab trousers and ordinary shirts had driven off with them in a private vehicle.

Mr. Orellana and Mr. Meléndez later interviewed Colonel Eugenio Vides Casanova, then Commander of the National Guard, who denied the statements by the Embassy officials. The lawyers then requested the Supreme Court to rule on the conflicting information given by the Embassy and the National Guard Command. 325/

At the same time, the Chief State Counsel, Mario Zamora, filed a complaint with the Second Criminal Court. Testimony was heard from relatives of the disappeared students. The judge also requested information from the United States Embassy and the National Guard, but did not receive a reply.

On 22 February 1980, the Supreme Court authorized the judge of the Second Criminal Court to initiate an investigation into the whereabouts of the disappeared students. That same night, Mario Zamora was murdered. 326/ After that, no further investigations were carried out.

However, the lawyers pursued their investigation, visiting National Guard barracks, 327/ while the students' relatives searched everywhere, even among the

bodies that were turning up on the outskirts of San Salvador. Neither the young men nor their bodies were found.

Three months later, the death squad known as the "Ejército Secreto Anti-Comunista" published a list of names which included people who had already been murdered or disappeared, such as Monsignor Romero, Father Rutilio Grande and Chief State Counsel Mario Zamora. The names of Francisco Arnulfo Ventura and José Humberto Mejía were on the list. At the end of the list was an exhortation which read, "... help us get rid of all these traitors and criminal communists. The country will thank you for it." 128/

FINDINGS

The Commission finds the following:

1. There is full evidence that members of the National Guard arrested Francisco Arnulfo Ventura and José Humberto Mejía, detained them in the parking lot of the United States Embassy and handed them over to men in civilian clothing who drove off with them in a private car.

2. While in the custody of these men who drove into the Embassy parking lot and to whom they were handed over by the guards who arrested them, Ventura and Mejía disappeared. There is no evidence that they are still alive.

3. There is substantial evidence that by failing to act quickly to investigate the incident and identify precisely who was responsible, then Colonel Eugenio Vides Casanova was guilty, at least of complicity through negligence and of obstructing the resulting judicial investigation.

The State failed in its duty to investigate, bring to trial and punish the guilty parties, compensate victims' relatives and inform them of the whereabouts of the disappeared persons. The State must comply with its obligations.

(b) RIVAS HERNANDEZ

SUMMARY OF THE CASE

Miguel Angel Rivas Hernández, aged 17, disappeared on Saturday, 29 November 1986, near the Ilopango air force base in San Salvador. Witnesses attributed his arrest to members of the air force, to whom his family went to demand his return; at the base however, they were told that he was not being detained. Despite this official denial, the family received confirmation that the young man was at the base. Accordingly, they reported his disappearance to human rights organizations.

In January 1987 the young man was allegedly transferred to the National Guard central barracks in San Salvador. In March 1988, the victim's father maintains that he saw him from a distance at the National Guard barracks.

The Commission finds that:

1. Miguel Angel Rivas Hernández was arrested on 29 November 1986 by members of the Salvadorian air force.

2. He was transferred from the air force base to the National Guard central barracks, where he disappeared, there being no evidence that he is still alive.

3. The Salvadorian air force and the National Guard covered up his arrest and detention.

4. The Commission for the Investigation of Criminal Acts (CIHD) did not cooperate properly with the Commission. It transmitted incomplete information concerning its investigation of the case.

Miguel Angel Rivas Hernández was arrested by members of the air force and subsequently transferred to the National Guard central barracks; not only did he disappear while in the custody of the National Guard, but there is no evidence that he is still alive. Air force and National Guard personnel covered up his detention. The State cannot evade its duty to investigate the case thoroughly.

DESCRIPTION OF THE FACTS

Miguel Angel Rivas Hernández, son of Guillermo Rivas Compas, a bus driver, and Rosa Elba Rivas, a housewife, lived in the Ilopango district adjacent to the Salvadorian air force base in San Salvador. He was not known in the community to be involved in political activities.

When he was 17, Miguel Angel got a job as attendant at the Texaco service station located on the Pan American Highway, just beyond the limits of air force base property. He walked to and from work every day.

It was common to see motorized patrols circulating at various times, as well as members of the Salvadorian air force on foot. Residents of the area usually knew airmen who worked at the base.

Arrest and disappearance

On Saturday, 29 November 1986, Miguel Angel's boss at the Texaco service station gave him permission to leave at approximately 7.30 p.m. As usual, he headed straight for home.

Miguel Angel's parents were expecting him at around 8 p.m. The young man did not arrive home. Worried, they inquired at the filling station, where they were assured that he had left shortly before 7.30 p.m.

His mother managed to find out that individuals in civilian clothing, driving a red pick-up truck with no doors on the cab, had detained a boy wearing white trousers and a black shirt. The description fitted Miguel Angel. His captors, from the description given, appeared to be members of the "7.30 p.m. air force patrol".

Very early the next day, Miguel Angel's parents went to the air force base to inquire about him, but were told that he was not being detained. They then

went to various police and military departments, but these also denied that they were holding him.

A neighbour told Miguel Angel's mother that a young man had witnessed the arrest and had recognized an airman from the base as one of the captors. The airman was nicknamed "El Mango".

An air force member, nicknamed "El Chino", also confirmed to a friend of Miguel Angel that he was being held at the Ilopango air force base. This friend told Miguel Angel's mother. At the base, however, they still officially denied his detention.

Complaints and searches

In view of these continuing denials, the family decided, in December 1986, to report Miguel Angel's disappearance to several human rights bodies: the Human Rights Commission of El Salvador (governmental), the Archdiocesan Legal Protection Office, the International Committee of the Red Cross (ICRC), Amnesty International and Americas Watch. Americas Watch brought the case to the attention of the Inter-American Commission on Human Rights (IACHR). 329/

In January 1987, the family was informed of Miguel Angel's transfer to the National Guard barracks in San Salvador. 330/ However, when they went there, his detention was again denied.

The transfer of Miguel Angel Rivas Hernández from the air force to the National Guard was apparently recorded in the Guard's books in January 1987. 331/

In February 1987, the case was presented to the United States Embassy in El Salvador. Some members of the United States Congress wrote letters to their own Embassy in El Salvador 332/ and to the then President of El Salvador, José Napoleón Duarte, 333/ expressing concern at Miguel Angel's disappearance. In March, an Amnesty International mission visited the National Guard barracks, but did not find the young man there.

The investigation

CIHD took charge of the investigation of the case in April 1987. 334/ Detective Sergeant Roberto Palacios Iraheta was assigned to the investigation. 335/

Sergeant Palacios found out from an informant that a National Guard lieutenant had called a meeting of five Guard members and had ordered them to hide the books containing the records of the interrogations to which Rivas Hernández 336/ had been subjected and the place where he was being held: National Guard cell (bartolina) No. 4, S-II.

On receiving this information, Lieutenant Colonel Nelson Iván López y López, Chief of the CIHD Executive Unit, decided to intervene directly in the case and went to the National Guard barracks, but did not find the young man. 337/

In a report dated 26 May, Lieutenant Colonel López noted that "... the investigations concerning Mr. Rivas Hernández are running into complications which require decisions at another level and which will shortly be reported ... (to the Head of CIHD)". 338/

On 2 June 1987, in another report, Lieutenant Colonel López "... described, in general terms, the difficulties encountered in the case of the disappearance of Mr. Rivas Hernández". 339/

Meanwhile, the family received regular information from its own source concerning Miguel Angel's state of health and place of detention. (The family's source was the same as that of CIHD.)

The family also transmitted regularly to this source various sums of money, which were carefully recorded by the victim's mother, during the period from June 1987 to February 1989. The informant reported seeing the detained youth in person and also gave an account of various transfers, both to official National Guard locations and to private houses; on several occasions, ICRC visited the official locations, without finding the young man.

On 23 March 1988, IACHR adopted resolution No. 21/88 in which it assumed that the facts of the complaint on the disappearance were true, advised the Government of El Salvador that the case involved extremely grave violations of human rights and recommended that it investigate and punish those responsible.

A few days later, nearly 16 months after the disappearance, the young man's father, Guillermo Rivas Campos, claims he caught sight of Miguel Angel for a few moments at the National Guard Command in San Pablo Tacachico.

The United States Embassy, through one of its officials, constantly supported the family in the search for the young man. Colonel Rivas Rivas of CIHD interviewed a colonel and a lieutenant of the National Guard, without success.

Following the FMLN offensive in 1989, the father of Miguel Angel Rivas Hernández was detained on charges of being linked to the guerrilla movement. His release was obtained with the help of the United States Embassy.

FINDINGS

The Commission finds the following:

1. There is substantial evidence that Miguel Angel Rivas Hernández was arrested by members of the Salvadorian air force.

2. There is substantial evidence that he was transferred to the National Guard.

3. There is substantial evidence that, while in the custody of the National Guard, the young man disappeared; there is no evidence that he is still alive.

4. There is substantial evidence that the air force subsequently covered up his arrest and detention and that the National Guard covered up his detention.

5. The State failed in its responsibility under international human rights law to investigate the case and to bring to trial and punish those responsible.

(c) CHAN CHAN AND MASSI

SUMMARY OF THE CASE

The Commission on the Truth received abundant complaints of disappearances and studied most of them in depth. The present case is symptomatic of the disregard shown for family values, family feelings, maternal grief and trade union solidarity, which is why the Commission chose to focus on it.

On 18 August 1989, trade unionists Sara Cristina Chan Chan Medina and Juan Francisco Massi Chávez were walking home along the Boulevard del Ejército, near San Salvador. She was 20 years old and a photographer for the trade union confederation FENASTRAS; he was 25, a student and worked for the LIDO factory. As they passed the Reprocentro factory, 2.5 kilometres from the capital city, six air force members arrested them in front of the main gate: passengers in the buses driving by on the road recognized the young people and saw them standing against the wall with their hands in the air while being interrogated by the soldiers. This occurred at approximately 6 p.m. They have not been seen since.

DESCRIPTION OF THE FACTS 340/

Background

Juan Francisco was born on 25 February 1973 in Quezaltepeque, La Libertad, to Carmen Chávez de Massi and Simeón Massi. He lived with his family in the Las Margaritas district in Soyapango, was a worker, was public relations secretary of the trade union at the LIDO company, worked with FENASTRAS members on various trade union projects, had never been arrested and had no criminal record.

Sara Cristina Chan Chan was the eldest daughter of Jorge Eduardo Chan Chan Jiménez and María Juana Antonia Medina. The family used to live in the city of Santa Ana, where her father was an office worker and a well-known leader of the trade union ANDA. She had never been arrested either and had no criminal record. She had however, suffered the consequences of her family's trade union activities.

On 16 June 1980, when Sara Cristina was barely 10 years old, men in civilian clothing came to her home and murdered her father in the presence of Sara Cristina, her three younger brothers and sisters and her mother. The men arrived at 2 a.m. and identified themselves as members of the National Guard. When Sara Cristina's father refused to open the door, the men broke one of the windows and shot him. They also fired at the propane gas cylinder in the

kitchen, and one of the men was about to light a match when he say Sara Cristina and her brothers and sisters hiding under a bed. They left without setting fire to the house because there were "quite a few children" in it.

Because of the murder of Jorge Eduardo Chan Chan Jiménez, the family went to live in San Salvador. It was only after "quite some time" that Sara Cristina's mother decided to return to Santa Ana. In July 1989, according to witnesses, a group of uniformed soldiers from the Second Brigade, together with some civilians, came to her house. They blindfolded her and put her into a vehicle to take her to the Santa Ana barracks; on the way, she was tortured. After her release that same month, the family returned to the capital to live. There, Sara Cristina had obtained a job as a photographer for FENASTRAS, one of the country's largest and most active trade unions. Because FENASTRAS took positions critical of the armed forces, it was labelled a "front for FMLN". In 1989, threats against FENASTRAS were common and its members were accused in the media of having organizational links to FMLN. A month before the disappearance of Sara Cristina and Juan Francisco, a paid advertisement in the newspaper El Diario de Hoy blamed leaders of FMLN, priests Ignacio Ellacuría and Segundo Montes and leaders of FENASTRAS for the country's destruction by terrorism. The same advertisement asked President Cristiani to institute the death penalty and summary trials for these people.

Such characterizations, and the persecution of members of the trade union movement in general, added to the years of confrontation between FENASTRAS and the armed forces, created a situation in which the armed forces viewed anyone belonging to FENASTRAS as suspect. As a result, FENASTRAS members and persons linked to the trade union movement were generally considered by the Salvadorian authorities to be a threat to the security of the State.

The arrests

On Saturday, 18 August, Sara Cristina spent the entire morning at FENASTRAS. She then took a bus to go and visit Juan Francisco, who worked at the LIDO factory on the Boulevard del Ejército. She met him and they set off on foot towards San Salvador. The young people lived in the Santa Lucia district, near Juan Francisco's work.

As they passed the Reprocentro commercial factory, 2.5 kilometres from the capital, six air force members stopped them in front of the main factory gate. The soldiers were armed with M-16 rifles and wore red berets with the air force metal badge. Three of them were in olive-green uniform, the others in camouflage.

Air force motor patrols and soldiers on foot were a common sight. The air force maintained checkpoints and patrols on the Boulevard del Ejército, near its base, 24 hours a day. It also had soldiers stationed inside several commercial firms located on the Boulevard, close to the base.

Between 6 and 6.30 p.m., several people travelling past the place recognized Sara Cristina and Juan Francisco. The first to go by was a colleague from work who recognized the two detainees, got out of the vehicle in which he was travelling and returned to San Salvador to report the arrests to FENASTRAS. Minutes later, two colleagues went by in a minibus; when they realized that the

two had been arrested, they too got out and returned to the city. Febe Elizabeth Vásquez, General Secretary of FENASTRAS, also drove by; she witnessed the arrest and returned to the office to inform her colleagues.

According to the log of incoming and outgoing vehicles kept by the Paratroop Battalion, a driver left at 6.50 p.m. to drop off patrols on the Boulevard. Others also left to patrol the Boulevard at this time. 341/

According to testimony, one of the soldiers asked Sara Cristina and Juan Francisco for their identity papers, while others stood guard. Other witnesses said that the soldiers had surrounded them and had placed them against a wall with their hands in the air, directly in front of the Reprocentro factory.

Some people were waiting for a bus nearby and must have witnessed the arrest. Out of fear, they did not approach, but they commented that the soldiers "had some detainees over there". That is what people usually said in those days.

The Paratroop Battalion was in charge of patrolling the Boulevard del Ejército and, that day, its third squadron was the unit assigned to guard the Boulevard. The officer in charge was Captain Oscar Arnulfo Díaz Amaya. In August 1989, some six or eight air force members were on duty 24 hours a day at the Reprocentro factory. These soldiers had orders to stay inside the factory premises. The air force did not provide the Commission on the Truth with the names of the officers of the unit which was guarding that company. The arrests were reported immediately to FENASTRAS which telephoned the media to report the incident. A FENASTRAS member left within 15 minutes to investigate; when he arrived on the scene, the young people were still being held. Later, two other people drove to the place, but the young people were no longer there. A total of five people witnessed the arrests.

The soldiers allegedly took Sara Cristina and Juan Francisco to the air force barracks, although no one saw a military vehicle at the scene. Lieutenant Colonel René Alcides Rodríguez Hurtado, Commander of the Paratroop Battalion at the time, told the Commission that, when Battalion troops made arrests, the normal procedure was to communicate with the duty officer through the air force base radio station; a vehicle would then be sent to bring the detainees to the base, where they would be interrogated. Following interrogation, the detainee was either released or handed over to the Treasury Police, the National Police or the National Guard. Lieutenant Colonel Rodríguez Hurtado, who was chief duty officer at the time, did not record the arrest of Sara Cristina and Juan Francisco. 342/ When FENASTRAS telephoned the air force to find out whether they had been transferred to the barracks, the duty commander denied that any arrest had been reported.

Efforts made by relatives

The next day, Sara Cristina's mother was informed of her daughter's arrest. Juan Francisco's family, however, learnt of the arrests the same day, through a relative.

According to testimony, on Monday, 20 August, a representative of the Human Rights Commission of El Salvador who was at the Ilopango air force base investigating the arrests of Sara Cristina and Juan Francisco said that he had been informed that the young people had been arrested by members of the air force, but that they had already been handed over to the Treasury Police central barracks. A sister of Juan Francisco and a FENASTRAS lawyer also went to the air force base but were not allowed in. The Paratroop Battalion log of incoming and outgoing vehicles for the period from 18 to 20 August 1989, however, has no entry concerning the detainees. 343/

From that moment on, the authorities systematically denied even the fact that the arrests had occurred, and hence all knowledge of the victims' whereabouts and fate. That same day, Monday, 20 August, Sara Cristina's mother had gone to the Ilopango air force base to ask about her daughter. The soldier on duty took out a list and then went to call another officer. A few minutes later, an officer by the name of Flores arrived. He told the mother to "do me a big favour, tell those FENASTRAS people to stop putting that propaganda on television. We don't have them".

From that moment on, Sara Cristina's mother found herself embarked on a futile quest. She went to various military and police departments around the city in search of information; from the National Police to the air force; from the air force to the Treasury Police; from the Treasury Police to the air force. All her efforts were in vain.

Juan Francisco's sister also went to the Treasury Police, where she was told that the air force had not transferred anyone. Returning to the air force base, she was told that she had been misinformed and the air force had not arrested anyone by the name of Juan Francisco Massi or Sara Cristina Chan Chan.

Sara Cristina's mother went to the air force a third time, at 8 a.m., on Tuesday, 21 August, where they insisted that she look for her daughter at the National Guard barracks. From there, she went round in circles again: from the National Guard to the Treasury Police; from the Treasury Police to the National Police; from the National Police to the Treasury Police; from the Treasury Police to the National Guard. Again, all her efforts were in vain.

On Wednesday, 22 August, she returned to the air force base, accompanied by a FENASTRAS lawyer. At the entrance to the base, she met Juan Francisco's father, who was taking similar steps to find his son.

The same air force officer dealt with them. This time, he told Sara Cristina's mother that if she came back one more time, "the same thing would happen to her", in other words, they might make her disappear. The officer denied the arrests, but took the opportunity to tell them that Juan Francisco was an FMLN commander and that young people who joined the guerrillas often died.

Since the mother insisted that various people had witnessed the arrests by members of the air force a few days earlier, another officer was finally called in; he took the mother to the bartolinas. She inspected six cells, but saw neither Sara Cristina nor Juan Francisco. The officer shouted, "Don't come back unless you want this to happen to you!". Out of fear, she never returned.

On Thursday, 23 August, Sara Cristina's younger sister went to the air force base, accompanied by a lawyer. The officer who dealt with them said to her: "You must be her sister, you look a lot like her. But we don't have her. Stop coming here to ask about her, because we don't have her here!" Sara Cristina's sister returned to the air force base with a sister of Juan Francisco on Friday, 24 August. Despite her pleas, the soldiers again denied the arrests.

The families of Sara Cristina and Juan Francisco left no stone unturned: they put paid advertisements in the newspaper demanding the release of both young people; 344/ they made countless visits to hospitals, cemeteries and police and military departments; they filed complaints with the (governmental) Human Rights Commission, the (non-governmental) Human Rights Commission, the Archdiocesan Legal Protection Office, the International Committee of the Red Cross (ICRC) and other human rights bodies; and they filed writs of habeas corpus with the Supreme Court. 345/

Letters were also sent to the Legislative Assembly and the Ministry of Justice. Two members of the Assembly informed Sara Cristina's mother that the young people's names were recorded in the air force's internal prisoner logs and that they were being held in the cellar of the air force barracks. The arrest and transfer to Ilopango air force base were thus confirmed.

The Director of the Archdiocesan Legal Protection Office sent letters to the Director-General of the Treasury Police at the time, Colonel Héctor Heriberto Hernández; the Commander of the air force, Colonel Juan Rafael Bustillo; the Chief of the Armed Forces Joint Staff at the time, Colonel René Emilio Ponce; the Minister of Defence and Public Security at the time, General Rafael Humberto Larios López; the Vice-Minister for Public Security, Colonel Inocente Orlando Montano; and the Vice-Minister for Defence, Colonel Juan Orlando Zepeda.

The only reply received was from the Treasury Police. In a letter dated 23 August 1989, Colonel Héctor Heriberto Hernández replied that he had "painstakingly" searched "the archives" and that Juan Francisco and Sara Cristina were not being held and had not been held by that body. 346/

The governmental Human Rights Commission searched for Sara Cristina and Juan Francisco at the air force base, the Artillery Brigade, the Cavalry Regiment, the National Police central barracks, the National Guard, the Treasury Police, the First Infantry Brigade, the Fourth Infantry Brigade and Military Detachment No. 1. 347/ These efforts proved fruitless and the investigation was apparently limited to asking the officer in charge of each unit to fill out a form stating that he was not holding the young people. The Human Rights Commission finally stated that it had been unable to find out any information on the case.

The Commission on the Truth asked the air force, the National Police, the Treasury Police and the National Guard for information on all the people arrested by them during the period from 16 to 20 August. It also asked for the list of people transferred from the air force to the other security forces during that week. The air force transmitted the list of people arrested by its units during the period from 16 to 20 August 1989; however, the list was not the

original, but a typewritten copy, and listed only six people as having been arrested on 17 August. There was no record of the arrest of Sara Cristina or Juan Francisco. 348/

The National Police transmitted a list of people arrested by its units during the period from 17 to 19 August 1989. This list, a typewritten copy of the names of several people arrested on those days, also contained no record of the arrest of Sara Cristina or Juan Francisco. 349/ The National Guard transmitted copies of the pages of the book in which it kept a record of people arrested on 17, 18, 19 and 20 August. There was no record of Sara Cristina or Juan Francisco. It stated that, on those days, "no one was transferred to it from the Salvadorian air force". 350/

The Massi family received several telegrams telling them to go to the National Police to get Juan Francisco. Juan Francisco's father established a relationship with an individual who allegedly belonged to the National Police and who told him that his son was at the police barracks in the Monserrat district and that he could communicate with him. According to that source, his son had injuries from the blows he had received and needed clothes and money. Although Juan Francisco's father took him food, clothing and money, he was never allowed to see him. He was told that Juan Francisco was in bad shape and that he had to wait until the young man was better. The father stayed in contact with the policeman until 1991, but Juan Francisco never appeared. Finally, the family gave up the search.

A month after the disappearance of Sara Cristina and Juan Francisco, on 18 September 1989, Sara Cristina's mother took part in a demonstration organized by FENASTRAS to demand the release of the two young people. Along with 63 other people, she was arrested by members of the National Police and transferred to the central barracks. She was threatened, beaten and tortured. The next month, her younger daughter was injured when a bomb exploded at FENASTRAS headquarters. After this last incident, the mother stopped looking for her daughter.

The official investigations

The military authorities, the Government and the judiciary all refused to investigate the incident. Because of the publicity surrounding the case, however, the air force asked then Lieutenant Edgardo Ernesto Echeverría, Chief of the C-II Tactical Support Division, to carry out an internal investigation. Lieutenant Echeverría questioned the soldiers in his division and, upon receiving negative replies, reported that no one in his unit had seen the two young people.

In testimony before the Commission, Lieutenant Echeverría described the investigation as "a bureaucratic investigation", confined to asking questions orally. He said that such cases had been common during the two years in which he worked in the intelligence division. The air force commander or chief had requested internal investigations on various occasions, and Lieutenant Echeverría could not recall a single case in which the air force had admitted responsibility.

FINDINGS

The Commission finds the following:

1. There is full evidence that members of the air force arrested Sara Cristina Chan Chan and Juan Francisco Massi.

2. There is sufficient evidence that the detainees were transferred to the air force base.

3. There is sufficient evidence that they disappeared while in the custody of the air force, and there is no evidence that they are still alive.

4. There is full evidence of a cover-up by air force personnel, who denied the arrests of Sara Cristina Chan Chan and Juan Francisco Massi.

5. The judiciary and the police investigation units which have so far refused to act must launch a special investigation into the air force to clear up the circumstances of the arrest and subsequent disappearance of the two young people. The Commission on the Truth considers it unacceptable that people seeking evidence in this case, which is typical of many such cases of disappearance, have been denied access to individuals or archives. It is incumbent on the judiciary, headed by the Supreme Court of Justice, to open this exhaustive investigation into the air force. As the expression of Salvadorian society, the State has an obligation to history to investigate the incident in a transparent manner, to punish the culprits and to compensate the families of the young victims Sara Cristina Chan Chan and Juan Francisco Massi.

C. MASSACRES OF PEASANTS BY THE ARMED FORCES

In 1980, 1981 and 1982, several massacres of peasants were carried out by troops of the armed forces of El Salvador. An account of three of them follows.

1. ILLUSTRATIVE CASE: EL MOZOTE

SUMMARY OF THE CASE

On 10 December 1981, in the village of El Mozote in the Department of Morazán, units of the Atlacatl Battalion detained, without resistance, all the men, women and children who were in the place. The following day, 11 December, after spending the night locked in their homes, they were deliberately and systematically executed in groups. First, the men were tortured and executed, then the women were executed and, lastly, the children, in the place where they had been locked up. The number of victims identified was over 200. The figure is higher if other unidentified victims are taken into account.

These events occurred in the course of an anti-guerrilla action known as "Operación Rescate" in which, in addition to the Atlacatl Battalion, units from the Third Infantry Brigade and the San Francisco Gotera Commando Training Centre took part.

In the course of "Operación Rescate", massacres of civilians also occurred in the following places: 11 December, more than 20 people in La Joya canton; 12 December, some 30 people in the village of La Ranchería; the same day, by units of the Atlacatl Battalion, the inhabitants of the village of Los Toriles; and 13 December, the inhabitants of the village of Jocote Amarillo and Cerro Pando canton. More than 500 identified victims perished at El Mozote and in the other villages. Many other victims have not been identified.

We have accounts of these massacres provided by eyewitnesses and by other witnesses who later saw the bodies, which were left unburied. In the case of El Mozote, the accounts were fully corroborated by the results of the 1992 exhumation of the remains.

Despite the public complaints of a massacre and the ease with which they could have been verified, the Salvadorian authorities did not order an investigation and consistently denied that the massacre had taken place.

The Minister of Defence and the Chief of the Armed Forces Joint Staff have denied to the Commission on the Truth that they have any information that would make it possible to identify the units and officers who participated in "Operación Rescate". They say that there are no records for the period.

The President of the Supreme Court has interfered in a biased and political way in the judicial proceedings on the massacre instituted in 1990.

DESCRIPTION OF THE FACTS

Village of El Mozote

On the afternoon of 10 December 1981, units of the Atlacatl Rapid Deployment Infantry Battalion (BIRI) arrived in the village of El Mozote, Department of Morazán, after a clash with guerrillas in the vicinity.

The village consisted of about 20 houses situated on open ground around a square. Facing onto the square was a church and behind it a small building known as "the convent", used by the priest to change into his vestments when he came to the village to celebrate mass. Not far from the village was a school, the Grupo Escolar.

When the soldiers arrived in the village they found, in addition to the residents, other peasants who were refugees from the surrounding areas. They ordered everyone out of the houses and into the square; they made them lie face down, searched them and asked them about the guerrillas. They then ordered them to lock themselves in their houses until the next day, warning that anyone coming out would be shot. The soldiers remained in the village during the night.

Early next morning, 11 December, the soldiers reassembled the entire population in the square. They separated the men from the women and children and locked everyone up in different groups in the church, the convent and various houses.

During the morning, they proceeded to interrogate, torture and execute the men in various locations. Around noon, they began taking out the women in groups, separating them from their children and machine-gunning them. Finally, they killed the children. A group of children who had been locked in the convent were machine-gunned through the windows. After exterminating the entire population, the soldiers set fire to the buildings.

The soldiers remained in El Mozote that might. The next day, they went through the village of Los Toriles, situated 2 kilometres away. Some of the inhabitants managed to escape. The others, men, women and children, were taken from their homes, lined up and machine-gunned.

The victims at El Mozote were left unburied. During the weeks that followed the bodies were seen by many people who passed by there. In Los Toriles, the survivors subsequently buried the bodies.

Background

The Atlacatl Battalion arrived at El Mozote in the course of a military action known as "Operación Rescate", which had begun two days earlier on 6 December and also involved units from the Third Brigade and the San Francisco Gotera Commando Training Centre.

The Atlacatl Battalion was a "Rapid Deployment Infantry Battalion" or "BIRI", that is, a unit specially trained for "counter-insurgency" warfare. It was the first unit of its kind in the armed forces and had completed its

training, under the supervision of United States military advisers, at the beginning of that year, 1981.

Nine months before "Operación Rescate" took place, a company of the Atlacatl Battalion, under the command of Captain Juan Ernesto Méndez, had taken part in an anti-guerrilla operation in the same northern zone of Morazán. On that occasion, it had come under heavy attack from guerrillas and had had to withdraw with heavy casualties without achieving its military objective. This setback for the brand new "Rapid Deployment Infantry Battalion" made it the butt of criticism and jokes by officers of other units, who nicknamed it the "Rapid Retreat Infantry Battalion".

The goal of "Operación Rescate" was to eliminate the guerrilla presence in a small sector in northern Morazán, where the guerrillas had a camp and a training centre at a place called La Guacamaya.

Colonel Jaime Flórez Grijalva, Commander of the Third Brigade, was responsible for overseeing the operation. Lieutenant Colonel Domingo Monterrosa Barrios, Commander of the Atlacatl BIRI, was in command of the units taking part.

On 9 December, clashes took place between Government troops and the guerrillas. That same day, a company of the Atlacatl BIRI entered the town of Arambala. They rounded up the population in the town square and separated the men from the women and children. They locked the women and children in the church and ordered the men to lie face down in the square. A number of men were accused of being guerrilla collaborators. They were tied up, blindfolded and tortured. Residents later found the bodies of three of them, stabbed to death.

In Cumaro canton as well, residents were rounded up in the main square by Atlacatl units on the morning of 10 December. There, however, no one was killed.

There is sufficient evidence that units of the Atlacatl BIRI participated in all these actions. In the course of "Operación Rescate", however, other mass executions were carried out by units which it has not been possible to identify with certainty.

In all instances, troops acted in the same way: they killed anyone they came across, men, women and children, and then set fire to the houses. This is what happened in La Joya canton on 11 December, in the village of La Ranchería on 12 December, and in the village of Jocote Amarillo and Cerro Pando canton on 13 December.

Subsequent events

The El Mozote massacre became public knowledge on 27 January 1982, when The New York Times and The Washington Post published articles by Raymond Bonner and Alma Guillermoprieto, respectively, reporting the massacre. In January, they had visited the scene of the massacre and had seen the bodies and the ruined houses.

In the course of the year, a number of human rights organizations denounced the massacre. The Salvadorian authorities categorically denied that a massacre had taken place. No judicial investigation was launched and there was no word of any investigation by the Government or the armed forces.

On 26 October 1990, on a criminal complaint brought by Pedro Chicas Romero, criminal proceedings were instituted in the San Francisco Gotera Court of the First Instance. During the trial, which is still going on, statements were taken from witnesses for the prosecution; eventually, the remains were ordered exhumed, and this provided irrefutable evidence of the El Mozote massacre. The judge asked the Government repeatedly for a list of the officers who took part in the military operation. He received the reply that the Government did not have such information.

The results of the exhumation

The exhumation of the remains in the ruins of the little building known as the convent, adjacent to the El Mozote church, took place between 13 and 17 November 1992.

The material found in the convent was analysed by expert anthropologists and then studied in minute detail in the laboratories of the Santa Tecla Institute of Forensic Medicine and of the Commission for the Investigation of Criminal Acts by Dr. Clyde Snow (forensic anthropologist), Dr. Robert H. Kirschner (forensic pathologist), Dr. Douglas Scott (archaeologist and ballistics analyst), and Dr. John Fitzpatrick (radiologist), in collaboration with the Argentine Team of Forensic Anthropologists made up of Patricia Bernardi, Mercedes Doretti and Luis Fondebrider.

The study made by the experts led to the following conclusions:

1. "All the skeletons recovered from the site and the associated evidence were deposited during the same temporal event ...". 351/ The physical evidence recovered in the site excludes the possibility that the site could have been used as a clandestine cemetery in which the dead were placed at different times.

2. "The events under investigation are unlikely to have occurred later than 1981". 352/ Coins and bullet cartridges bearing their date of manufacture were found in the convent. In no case was this date later than 1981.

3. In the convent, bone remains of at least 143 people were found. 353/ However, the laboratory analysis indicates that "there may, in fact, have been a greater number of deaths. This uncertainty regarding the number of skeletons is a reflection of the extensive perimortem skeletal injuries, postmortem skeletal damage and associated commingling. Many young infants may have been entirely cremated; other children may not have been counted because of extensive fragmentation of body parts". 354/

4. The bone remains and other evidence found in the convent show numerous signs of damage caused by crushing and by fire.

5. Most of the victims were minors.

The experts determined, initially, after the exhumation, that "approximately 85 per cent of the 117 victims were children under 12 years of age", 355/ and indicated that a more precise estimate of the victims' ages would be made in the laboratory. 356/

In the laboratory, the skeletal remains of 143 bodies were identified, including 131 children under the age of 12, 5 adolescents and 7 adults. The experts noted, in addition, that "the average age of the children was approximately 6 years". 357/

6. One of the victims was a pregnant woman. 358/

7. Although it could not be determined with certainty that all the victims were alive when they were brought into the convent, "it can be concluded that at least some of the victims were struck by bullets, with an effect that may well have been lethal, inside the building". 359/

This conclusion is based on various factors:

(1) A "large quantity of bullet fragments [were] found inside the building ...". 360/ "Virtually all the ballistic evidence was found at level 3, in direct contact with or imbedded in the bone remains, clothing, household goods and floor of the building". 361/ Moreover, "the spatial distribution of most of the bullet fragments coincides with the area of greatest concentration of skeletons and with concentrations of bone remains". 362/ Also, the second and third areas of concentration of bullet fragments coincide with the second and third areas of concentration of skeletons, respectively.

(2) "Of 117 skeletons identified in the field, 67 were associated with bullet fragments. In 43 out of this subtotal of 67, the fragments were found in the areas of the skull and/or the thorax, i.e., parts of the body where they could have been the cause of death." 363/

(3) "In at least nine cases, the victims were shot inside the building while lying in a horizontal position on the floor. The shots were fired downwards. In at least six of the nine cases mentioned, these shots could have caused the victims' deaths." 364/

(4) "Direct skeletal examination showed intact gunshot wounds of entrance in only a few skulls because of the extensive fracturing that is characteristically associated with such high-velocity injuries. Skull reconstruction identified many more entrance wounds, but relatively few exit wounds. This is consistent with the ballistic evidence that the ammunition involved in the shootings was of a type likely to fragment upon impact, becoming essentially frangible bullets. Radiologic examination of skull bones demonstrated small metallic densities consistent with bullet fragments in 45.2 per cent (51/115).

In long bones, vertebrae, pelvis and ribs there were defects characteristic of high velocity gunshot wounds." 365/

(5) The weapons used to fire at the victims were M-16 rifles.

As the ballistics analyst described, "two hundred forty-five cartridge cases recovered from the El Mozote site were studied. Of these, 184 had discernible headstamps, identifying the ammunition as having been manufactured for the United States Government at Lake City, Missouri. Thirty-four cartridges were sufficiently well preserved to analyze for individual as well as class characteristics. All of the projectiles except one appear to have been fired from United States-manufactured M-16 rifles". 366/

(6) At least 24 people participated in the shooting. 367/ They fired "from within the house, from the doorway, and probably through a window to the right of the door". 368/

An important point that emerges from the results of the observations is that "no bullet fragments were found in the outside west facade of the stone wall". 369/

The evidence presented above is full proof that the victims were summarily executed, as the witnesses have testified.

The experts who carried out the exhumation reached the following conclusion: "All these facts tend to indicate the perpetration of a massive crime, there being no evidence to support the theory of a confrontation between two groups". 370/

For their part, the experts who conducted the laboratory analysis said that "the physical evidence from the exhumation of the convent house at El Mozote confirms the allegations of a mass murder". 371/ They went on to say, on the same point: "There is no evidence to support the contention that these victims, almost all young children, were involved in combat or were caught in the crossfire of combat forces. Rather the evidence strongly supports the conclusion that they were the intentional victims of a mass extra-judicial execution". 372/

Action by the Commission

Before the Commission on the Truth began its work, the Director of the Human Rights Division of the United Nations Observer Mission in El Salvador (ONUSAL) brought a motion before the judge hearing the case to have qualified foreign experts appointed.

The Commission on the Truth, from the moment it was set up, took a special interest in having the exhumation conducted under conditions that guaranteed the necessary scientific rigour and impartiality.

The Commission also reviewed the available publications, documentation and court records. It took testimony directly from eyewitnesses and was present at the exhumation site.

The Commission wrote three times to the Minister of Defence and once to the Chief of the Armed Forces Joint Staff requesting information about the units and officers who took part in "Operación Rescate", and about any orders, reports or other documents relating to that operation that might be in the archives. The only response it received was that there were no records for that period.

Special mention must be made of the interference in the case by the President of the Supreme Court of El Salvador, Mr. Mauricio Gutiérrez Castro. When on 17 July 1991 representatives of the Legal Protection Office asked the trial judge to appoint qualified foreign experts to conduct the exhumations, he told them that this would require the approval of Mr. Gutiérrez Castro. It was not until nine months later, on 29 April 1992, after ONUSAL stepped in, that he proceeded to appoint them.

On 16 July 1992, when the members of the Commission on the Truth went to see him, Mr. Gutiérrez Castro said that the exhumation ordered by the trial judge would prove that "only dead guerrillas are buried" at El Mozote.

A few days later, the court hearing the case ruled that its appointment of foreign experts was not valid without a complicated procedure of consultation with foreign Governments through the Supreme Court of Justice, with the result that the exhumation was on the point of going ahead without the presence of such experts.

On 21 October, Mr. Mauricio Gutiérrez Castro came to the exhumation site and, in giving his opinion on how future excavations in the zone should be carried out, said that care should be taken not to "favour one of the parties" (presumably the Government and FMLN) "because of the political implications of this process, which override legal considerations".

FINDINGS

There is full proof that on 11 December 1981, in the village of El Mozote, units of the Atlacatl Battalion deliberately and systematically killed a group of more than 200 men, women and children, constituting the entire civilian population that they had found there the previous day and had since been holding prisoner.

The officers in command of the Atlacatl Battalion at the time of the operation whom the Commission has managed to identify are the following: Battalion Commander: Lieutenant Colonel Domingo Monterrosa Barrios (deceased); Commanding Officer: Major Natividad de Jesús Cáceres Cabrera (now Colonel); Chief of Operations: Major José Armando Azmitia Melara (deceased); Company Commanders: Juan Ernesto Méndez Rodríguez (now Colonel); Roberto Alfonso Mendoza Portillo (deceased); José Antonio Rodríguez Molina (now Lieutenant Colonel), Captain Walter Oswaldo Salazar (now Lieutenant Colonel) and José Alfredo Jiménez (currently a fugitive from justice).

There is sufficient evidence that in the days preceding and following the El Mozote massacre, troops participating in "Operación Rescate" massacred the non-combatant civilian population in La Joya canton, in the villages of La Ranchería, Jocote Amarillo y Los Toriles, and in Cerro Pando canton.

Participating in this operation, in addition to the Atlacatl Battalion, were units of the Third Infantry Brigade, commanded by Colonel Jaime Flórez Grijalba (now retired) who was also responsible for supervising the operation, and units from the San Francisco Gotera Commando Training Centre commanded by Colonel Alejandro Cisneros (now retired).

Although it received news of the massacre, which would have been easy to corroborate because of the profusion of unburied bodies, the Armed Forces High Command did not conduct or did not give any word of an investigation and repeatedly denied that the massacre had occurred. There is full evidence that General José Guillermo García, then Minister of Defence, initiated no investigations that might have enabled the facts to be established. There is sufficient evidence that General Rafael Flórez Lima, Chief of the Armed Forces Joint Staff at the time, was aware that the massacre had occurred and also failed to undertake any investigation.

The High Command also took no steps whatsoever to prevent the repetition of such acts, with the result that the same units were used in other operations and followed the same procedures.

The El Mozote massacre was a serious violation of international humanitarian law and international human rights law.

The President of the Supreme Court of Justice of El Salvador, Mr. Mauricio Gutiérrez Castro, has interfered unduly and prejudicially, for biased political reasons, in the ongoing judicial proceedings on the case.

The Commission recommends that the competent authorities implement the recommendations made in the experts' reports (see annex 1).

2. SUMPUL RIVER

SUMMARY OF THE CASE

On 14 May 1990, units of Military Detachment No. 1, the National Guard and the paramilitary Organización Nacional Democrática (ORDEN) deliberately killed at least 300 non-combatants, including women and children, who were trying to flee to Honduras across the Sumpul river beside the hamlet of Las Aradas, Department of Chalatenango. The massacre was made possible by the cooperation of the Honduran armed forces, who prevented the Salvadorian villagers from landing on the other side.

The Salvadorian military operation had begun the previous day as an anti-guerrilla operation. Troops advanced from various points, gradually converging on the hamlet of Las Aradas on the banks of the Sumpul river. In the course of the operation, there had been a number of encounters with the guerrillas.

There is sufficient evidence that, as they advanced, Government forces committed acts of violence against the population, and this caused numerous people to flee, many of whom congregated in the hamlet, consisting of some dozen houses.

Troops attacked the hamlet with artillery and fire from two helicopters. The villagers and other people displaced by the operation attempted to cross the Sumpul river to take refuge in Honduras. Honduran troops deployed on the opposite bank of the river barred their way. They were then killed by Salvadorian troops who fired on them in cold blood.

DESCRIPTION OF THE FACTS

Background

In 1970, when the so-called "Soccer War" between Honduras and El Salvador ended, a demilitarized zone was established comprising a strip of land three kilometres wide on each side of the border. The zone was monitored by an observer mission of the Organization of American States. The armed forces of both countries were prohibited from entering the zone.

When the conflict in El Salvador began, many Salvadorian peasants took refuge in Honduras, where they set up camps. When anti-guerrilla actions increased in early 1980, a large number of Salvadorian peasants crossed the border, leaving a number of villages, including Las Aradas, almost deserted. The Honduran Government became increasingly concerned as Salvadorian refugees entered and remained in Honduras. It should be recalled that one of the reasons for the war between the two countries had been the settlement of Salvadorian peasants in border areas in Honduran territory.

The Salvadorian Government, for its part, believed that the demilitarized zone and Honduran territory were serving as a base of operations and a refuge for guerrillas whose activities had intensified in the adjacent area, in the north of the Department of Chalatenango.

A large part of the peasant population in the zone also belonged to the Federación de Trabajadores del Campo, which had joined the struggle for agrarian reform and was viewed by the Salvadorian Government as a guerrilla support organization.

In the last two weeks of March 1980, Honduran authorities put pressure on the refugees to return to their country. A group of refugees returned to Las Aradas.

Anti-guerrilla operations by the Government of El Salvador continued in the zone. After the villagers' return to Las Aradas and before the May massacre, National Guard and ORDEN troops, who were able to enter the zone freely, twice advanced as far as Las Aradas. On both occasions, residents fled across the river to Honduran territory.

On 5 May, nine days before the massacre, Honduran and Salvadorian military leaders met on the border, according to the Honduran press, to work out a way of preventing Salvadorian guerrillas from entering Honduras. A few days later, Honduran soldiers again put pressure on Salvadorian refugees and a group of them returned to Las Aradas.

When the operation which would lead to the massacre began a week later, many fleeing peasants converged on Las Aradas, confident that from there they would be able to cross the hanging bridge over the Sumpul river, which was running high because of the rainy season, and take refuge in Honduran territory. They also hoped that Salvadorian soldiers would not enter the demilitarized zone.

Subsequent events

The armies of the two countries left the zone that same day. The National Guard continued to patrol the area to prevent residents from returning. The bodies were not buried.

In Honduras, the massacre received extensive media coverage. The first news report was transmitted on 21 May by a morning news programme on Radio Noticias del Continente, which operates out of Costa Rica. A few days later, the newspaper Tiempo published an interview with Father Roberto Yalaga, a priest in the diocese of Santa Rosa de Copán, who confirmed that at least 325 Salvadorians had been killed by the army and that a Honduran military detachment had cordoned off the bank of the Sumpul river.

Two foreign journalists, Gabriel Sanhuesa and Ursula Ferdinand, managed to get to Las Aradas from the Honduran side and obtain visual evidence of the massacre. They also managed to interview a number of survivors who had taken refuge in Honduran border villages. They published a leaflet on the incident.

A formal complaint about the massacre was filed by the priests and nuns of the Honduran diocese of Santa Rosa de Copán on 19 June 1980, signed by the diocese's 38 pastoral workers. The complaint was based on the visual evidence and the testimony gathered by the diocese as part of its investigations.

The complaint accused the Government and the armed forces of the Republic of Honduras of complicity in the massacre and in the subsequent cover-up and the Organization of American States (OAS) of complicity in covering up the tragic event. This accusation was endorsed by the entire Honduran Conference of Bishops, headed by the Archbishop of Tegucigalpa, Monsignor Héctor E. Santos, in a statement published by the press on 1 July 1980. From El Salvador, the Archdiocese of San Salvador endorsed and associated itself with the complaint by the diocese of Santa Rosa de Copán, in a communiqué published on 29 June 1980.

The Minister of Defence of El Salvador, General José Guillermo García, denied that the massacre had occurred. A year later, in an interview, he admitted that a number of people had died in a clash on 14 May 1980 at the Sumpul river, but said that the number of deaths had been greatly exaggerated. 373/

In October 1980, President José Napoleón Duarte, in an interview with the Canadian publication United Church Observer, acknowledged that a military operation had taken place in the Sumpul river area and said that some 300 people, all of them "communist guerrillas", had died. 374/

The charges made by the diocese of Santa Rosa de Copán were also denied in an official statement issued by the Government and armed forces of Honduras describing the accusations as libellous and irresponsible. 375/ The Honduran President, Policarpo Paz, denied the truth of the complaint in a speech broadcast on national radio and television. The Minister of Government, Colonel Cristóbal Díaz García, told the press that Honduras would not set up any commission of investigation. Replying to a question, he said that no one doubted that there had been a massacre on the other side of the river, but that Honduras had not been involved.

Colonel Alfonso Rodríguez Rincón, Chief of the OAS observers, dismissed the accusation by the Honduran Church as the product of an overactive imagination. He said that as Chief of the observers, he could confirm that they had known nothing about the incident. He added that there were numerous operations on the Salvadorian side and it was conceivable that many guerrillas had been killed; he wondered whether the incident was perhaps being confused with another one.

However, the Commission found out that OAS observers did report a major clash between Salvadorian troops and FMLN guerrillas as having occurred between 14 and 16 May 1980 on the border in that region. According to their report, over 200 people had been killed and some civilians had been caught in the crossfire, but there was no evidence that innocent civilians had been massacred.

On 26 October 1992, surviving witnesses of the Sumpul river massacre filed a judicial complaint with the Chalatenango Court of First Instance, which was declared admissible under the title "on verifying the murder of 600 people". 376/

Action taken by the Commission

The Commission received some 100 direct testimonies on the incident and examined an equivalent number of testimonies presented to other organizations. It examined the documentation available, including photographs, and interviewed the original complainants. A Commission official travelled to Honduras to gather direct testimony. Members of the Commission personally inspected the scene of the massacre.

The Commission repeatedly requested the cooperation of the Salvadorian military authorities in conducting the investigation, but the only reply it received was that there were no records for that period. The Commander of Military Detachment No. 1 at the time, Colonel Ricardo Augusto Peña Arbaiza, was summonsed to testify but did not appear.

FINDINGS

There is substantial evidence that on 13 and 14 May 1980, troops from Military Detachment No. 1 and members of the National Guard and of the paramilitary Organización Nacional Demócratica (ORDEN), backed by the air force, massacred no less than 300 unarmed civilians on the banks of the Sumpul river.

The Commission believes that the Salvadorian military authorities were guilty of a cover-up of the incident. There is sufficient evidence that Colonel Ricardo Augusto Peña Arbaiza, Commander of Military Detachment No. 1 in May 1980, made no serious investigation of the incident.

The Sumpul river massacre was a serious violation of international humanitarian law and international human rights law.

3. EL CALABOZO

SUMMARY OF THE CASE

On 22 August 1982, in the place known as El Calabozo situated beside the Amatitán river in the north of the Department of San Vicente, troops of the Atlacatl Rapid Deployment Infantry Battalion (BIRI) killed over 200 men, women and children whom they were holding prisoner.

The victims had converged on El Calabozo from various directions, fleeing a vast anti-guerrilla military operation which had begun three days earlier in the area of Los Cerros de San Pedro and which involved, in addition to the Atlacatl BIRI, other infantry, artillery and aerial support units.

There was a major guerrilla presence, supported by the local population, in the area of the operation. Government forces had penetrated the area on earlier occasions, but the guerrillas had avoided combat. This time the operation, which bore the name "Teniente Coronel Mario Azenón Palma", involved some 6,000 troops and was designed to clear the area of guerrillas. As the troops advanced, the civilian population fled, fearing the shelling and the soldiers' violence. One of the places where a large number of fugitives congregated was El Calabozo.

According to witnesses, the fugitives were surprised by the Atlacatl Battalion unit. Some of them managed to escape; the rest were rounded up and machine-gunned.

The military operation continued for several more days. The Government informed the public that it had been a success: many guerrillas had been killed, camps had been destroyed and weapons and other supplies had been seized.

On 8 September, two weeks after the incident, the massacre was reported in The Washington Post. The Minister of Defence, General José Guillermo García, said that an investigation had been made and that no massacre had occurred. He repeated this assertion in an interview with the Commission.

In July 1992, the San Sebastián Mixed Court of First Instance launched a judicial investigation of the incident on the basis of a private complaint.

The Commission received eye witness testimony and examined available documentation. Commission members inspected the scene of the massacre. When the Commission requested information on the military operation, the units which had taken part in it and the outcome of the alleged investigation, the Minister of Defence replied that there were no records for that period.

FINDINGS

There is sufficient evidence that on 22 August 1982, troops of the Atlacatl Battalion deliberately killed over 200 civilians - men, women and children - who had been taken prisoner without offering any resistance. The incident occurred at the place known as El Calabozo, near the canton of Amatitán Abajo, Department of San Vicente.

Although the massacre was reported publicly, the Salvadorian authorities denied it. Despite their claim to have made an investigation, there is absolutely no evidence that such an investigation took place.

The El Calabozo massacre was a serious violation of international humanitarian law and international human rights law.

4. PATTERN OF CONDUCT

In addition to the massacres described here, the Commission received direct testimony concerning numerous other mass executions that occurred during the years 1980, 1981 and 1982, in which members of the armed forces, in the course of anti-guerrilla operations, executed peasants - men, women and children who had offered no resistance - simply because they considered them to be guerrilla collaborators.

Because the number of such individual and group executions is so high and the reports are so thoroughly substantiated, the Commission rules out any possibility that these might have been isolated incidents where soldiers or their immediate superiors went to extremes.

Everything points to the fact that these deaths formed part of a pattern of conduct, a deliberate strategy of eliminating or terrifying the peasant population in areas where the guerrillas were active, the purpose being to deprive the guerrilla forces of this source of supplies and information and of the possibility of hiding or concealing themselves among that population.

It is impossible to blame this pattern of conduct on local commanders and to claim that senior commanders did not know anything about it. As we have described, massacres of the peasant population were reported repeatedly. There is no evidence that any effort was made to investigate them. The authorities dismissed these reports as enemy propaganda. Were it not for the children's skeletons at El Mozote, some people would still be disputing that such massacres took place.

Those small skeletons are proof not only of the existence of the cold-blooded massacre at El Mozote but also of the collusion of senior commanders of the armed forces, for they show that the evidence of the unburied bodies was there for a long time for anyone who wanted to investigate the facts. In this case, we cannot accept the excuse that senior commanders knew nothing of what had happened.

No action was taken to avoid incidents such as this. On the contrary, the deliberate, systematic and indiscriminate violence against the peasant population in areas of military operations went on for years.

D. DEATH SQUAD ASSASSINATIONS

1. ILLUSTRATIVE CASE: ARCHBISHOP ROMERO

SUMMARY OF THE CASE

On 24 March 1980, the Archbishop of San Salvador, Monsignor Oscar Arnulfo Romero y Galdámez, was assassinated while celebrating mass in the Chapel of the Hospital de la Divina Providencia.

The Commission finds the following:

1. Former Major Roberto D'Aubuisson gave the order to assassinate the Archbishop and gave precise instructions to members of his security service, acting as a "death squad", to organize and supervise the assassination.

2. Captains Alvaro Saravia and Eduardo Avila, together with Fernando Sagrera and Mario Molina, were actively involved in planning and carrying out the assassination.

3. Amado Antonio Garay, the driver of former Captain Saravia, was assigned to drive the gunman to the Chapel. Mr. Garay was a direct witness when, from a red, four-door Volkswagen, the gunman fired a single high velocity .22 calibre bullet to kill the Archbishop.

4. Walter Antonio "Musa" Alvarez, together with former Captain Saravia, was involved in paying the "fees" of the actual assassin.

5. The failed assassination attempt against Judge Atilio Ramírez Amaya was a deliberate attempt to deter investigation of the case.

6. The Supreme Court played an active role in preventing the extradition of former Captain Saravia from the United States and his subsequent imprisonment in El Salvador. In so doing, it ensured, inter alia, impunity for those who planned the assassination.

DESCRIPTION OF THE FACTS 377/

The assassination

On Monday, 24 March 1980, the Archbishop of San Salvador, Monsignor Oscar Arnulfo Romero y Galdámez, was celebrating mass 378/ in the Chapel of the Hospital de la Divina Providencia 379/ when he was killed by a professional assassin who fired a single .22 or .223 calibre bullet from a red, four-door Volkswagen vehicle. The bullet hit its mark, causing the Archbishop's death from severe bleeding.

Background

Monsignor Romero had become a well-known critic of violence and injustice and, as such, was perceived in right-wing civilian and military circles as a dangerous enemy. His sermons deeply irritated these circles because they included human rights violations produced by the Archdiocesan Legal Aid Office.

As a result, members of the Government and the armed forces viewed his actions as favouring subversives.

Newspapers criticized him in unequivocally hostile terms, such as "... a demagogic and violent Archbishop ... (who) preached terrorism from his cathedral ...", 380/ or "... the armed forces should begin to oil their weapons (...)". 381/

In his sermon on 17 February 1980, he expressed opposition to United States military aid to El Salvador, pointing out that "(...) neither the (Government) Junta nor the Christian Democrats govern this country. Political power is in the hands of the armed forces which are unscrupulous in their use of this power. They only know how to repress the people and defend the interests of the Salvadorian oligarchy (...)". 382/

That same month, he received death threats 383/ and therefore decided that his colleagues should not accompany him when he went out, so as not to expose themselves to unnecessary risks. 384/ On Monday, 10 March, the day after he had celebrated a mass for Mario Zamora, assassinated on 23 February, 385/ an attaché case was found near the High Altar behind the pulpit, 386/ which the Explosives and Demolition Unit of the National Police found to contain a bomb that had failed to go off. 387/

In his sermon on Sunday, 23 March, the Archbishop appealed to Salvadorian soldiers themselves: "... I beseech you, I beg you, I order you, in the name of God, to stop the repression!". 388/

The official investigation

The investigation to determine who was responsible for the Archbishop's assassination was not only inefficient but also highly controversial and plagued by political motivations. Some of the main elements which the Commission took into account in its own investigation are described below.

Initial inquiries and incidents

The National Police went to the Chapel of the Hospital de la Divina Providencia to gather evidence. They did not do this properly, however, since they failed to collect material evidence of the crime at the scene.

Atilio Ramírez Amaya, the Judge of the Fourth Criminal Court, gave instructions for the Salvadorian Polyclinic to perform an autopsy on the prelate: a small entry wound barely 5 millimetres in diameter in the right thorax indicated the point of entry of the bullet. It had fragmented without exiting the Archbishop's body, causing fatal internal bleeding. Three fragments of the bullet were extracted for further study. 389/ Judge Ramírez Amaya maintained that the bullet used must have been a .22 or similar. 390/ Going by the weight of the fragments, the National Police confirmed that the bullet was a .22 calibre but did not reach any more precise conclusions. 391/ Following an attempt to assassinate him at his home on 27 March, Judge Ramírez Amaya tendered his resignation and left the country. 392/

The "Saravia Diary" and other documents found at the San Luis estate

On 7 May 1980, in a raid on the San Luis estate in Santa Tecla, 12 active and retired military personnel and 12 civilians, 393/ including former Major Roberto D'Aubuisson, who had gathered there were arrested and formally accused of plotting to overthrow the Government by means of a coup d'état. 394/

The documents seized during the raid included a "List of accusations made by a South American informant against Monsignor Oscar Arnulfo Romero, Archbishop of San Salvador. Informant is prepared to provide filmed and written evidence within a period not exceeding 15 days", 395/ a diary belonging to former Captain Alvaro Rafael Saravia and two lists of names of commanders and officers (of the Salvadorian armed forces). 396/

The "Saravia Diary" contained various important pieces of information concerning the assassination of Monsignor Romero. It referred to purchases and deliveries of large quantities of arms and ammunition, some of which, based on the ballistic study made by Judge Ramírez Amaya, were of the type used in the assassination. 397/ In addition, several names which appeared over and over again in the diary were of people concerning whose involvement in planning, carrying out or covering up the assassination the Commission has already received sufficient evidence. 398/ Other details include the name "Amado" - Amado Garay, the driver assigned to drive the assassin - and receipts for petrol purchased for a red vehicle used by former Captain Saravia.

A third document, entitled "General Framework for the Organization of the Anti-Marxist Struggle in El Salvador", reflected the approach and objectives of the San Luis group. Their goal was to seize power in El Salvador and their political plan provided for "direct action", so-called "activities of combat networks", including "attacks on selected individuals". 399/

None of the documents seized at the San Luis estate was made available to the Judge of the Fourth Criminal Court, and it was only years later that the court gained access to a copy of the diary. The Judge's efforts to locate the original diary proved unsuccessful.

The accusations by former Major D'Aubuisson

In March 1984, former Major Roberto D'Aubuisson appeared on television during the presidential election campaign and showed a recording of an alleged FMLN commander, "Pedro Lobo", confessing to having been an accomplice in the assassination of Monsignor Romero. Almost immediately, "Pedro Lobo" was identified as a common criminal who had been in prison from 1979 to 1981. 400/ He said that he had been offered US$ 50,000 to claim responsibility for the assassination. 401/ Former Major D'Aubuisson nevertheless continued to insist that the guerrillas had assassinated Monsignor Romero, 402/ and officially the armed forces continue to hold to this position. 403/

The work of the Commission for the Investigation of Criminal Acts

The Commission for the Investigation of Criminal Acts (CIHD) began its investigation into Monsignor Romero's assassination in January 1986. 404/

In November 1987, Amado Antonio Garay, one of the San Luis detainees and former Captain Alvaro Saravia's driver revealed that on 24 March 1980, Saravia had ordered him to drive a red Volkswagen to the Hospital de la Divina Providencia in the Miramonte district. He had parked opposite the Chapel. His passenger, a bearded stranger, had ordered him to crouch down and pretend to be repairing something. He had heard a shot, turned around and seen the individual "holding a gun with both hands pointing towards the right side of the rear right window of the vehicle (...)". He had immediately smelt gunpowder and at that moment the bearded man had calmly told him: "drive slowly, take it easy" and they had driven off. 405/

Garay alleged that he had driven the individual to former Captain Saravia, to whom the stranger had said "mission accomplished". Three days later, Garay had driven Saravia to a house where former Major D'Aubuisson was and Saravia had said in front of D'Aubuisson: "We've already done what we planned about killing Monsignor Arnulfo Romero". 406/

The Attorney General's Office presented Garay to make a statement to Judge Ricardo Alberto Zamora Pérez on 20 November 1987. Based on the description of the gunman provided by Garay 407/ and the investigation of places mentioned by the witness, 408/ on 24 November the judge ordered the arrest of former Captain Saravia 409/ and officially requested the Central Board of Elections to certify the status of former Major D'Aubuisson as a member of the Legislative Assembly, the first step towards requesting that his parliamentary immunity be withdrawn and that he appear in court. 410/

Saravia filed a writ of habeas corpus, on which the Supreme Court took a year to rule. In December 1988, the Supreme Court ruled that "(...) the aforementioned testimony (of Garay) is invalid (...) the witness made his statement seven years, seven months and 24 days after the event about which he is testifying, (which) makes his testimony lose all credibility (...)". It also took the view that the Attorney General did not have the power to request extradition. 411/

The accusation of the alleged gunman

CIHD made other investigations. Garay picked out a 1969 photograph 412/ of Mr. Héctor Antonio Regalado with a beard drawn in as being closest to his description of the gunman. After Saravia, Regalado had been responsible for D'Aubuisson's personal security. 413/ When he appeared before the Commission, Regalado denied having fired the shot. CIHD found no convincing evidence that he had participated in the assassination.

The investigation by the Commission on the Truth

The Commission on the Truth had access to sufficient evidence to find that:

Former Major Roberto D'Aubuisson, former Captain Alvaro Saravia and Fernando Sagrera 414/ were present on 24 March 1980 at the home of Alejandro Cáceres in San Salvador. Captain Eduardo Avila arrived and told them that Archbishop Romero would be celebrating a mass that day. Captain Avila said that this would be a good opportunity to assassinate the Archbishop. D'Aubuisson ordered that this be done and put Saravia in charge of the

operation. When it was pointed out that a sniper would be needed, Captain Avila said he would contact one through Mario Molina. Amado Garay was assigned to drive the assassin to the Chapel.

The parking lot of the Camino Real Hotel was the assembly point before proceeding to the Chapel. There, the bearded gunman, carrying the murder weapon, got into a red, four-door Volkswagen driven by Garay. At least two vehicles drove from the Camino Real Hotel to the scene of the crime. Outside the main entrance to the Chapel, the assassin fired a single bullet from the vehicle, killing Archbishop Romero. D'Aubuisson ordered that 1,000 colones be handed over to Walter Antonio "Musa" Alvarez, who received the payment in question, as did the bearded assassin. Alvarez was abducted in September 1981 and was found dead not long afterwards.

FINDINGS

The Commission finds the following:

1. There is full evidence that:

(a) Former Major Roberto D'Aubuisson gave the order to assassinate the Archbishop and gave precise instructions to members of his security service, acting as a "death squad", to organize and supervise the assassination.

(b) Captains Alvaro Saravia and Eduardo Avila, together with Fernando Sagrera and Mario Molina, were actively involved in planning and carrying out the assassination.

(c) Amado Antonio Garay, the driver of former Captain Saravia, was assigned to drive the gunman to the Chapel. Mr. Garay was a direct witness when, from a red, four-door Volkswagen, the gunman fired a single high velocity .22 bullet to kill the Archbishop.

2. There is sufficient evidence that Walter Antonio "Musa" Alvarez, together with former Captain Saravia, was involved in paying the "fees" of the actual assassin.

3. There is sufficient evidence that the failed assassination attempt against Judge Atilio Ramírez Amaya was a deliberate attempt to deter investigation of the case.

4. There is full evidence that the Supreme Court played an active role in preventing the extradition of former Captain Saravia from the United States and his subsequent imprisonment in El Salvador. In so doing, it ensured, inter alia, impunity for those who planned the assassination.

2. THE DEATH SQUAD PATTERN

The Commission on the Truth received a great many complaints of serious acts of violence allegedly perpetrated by death squads. The direct testimony received concerns a total of 817 victims of abductions, disappearances and executions that occurred between 1980 and 1991. 415/

There is no question that what have been classified as murders committed by the death squads in rural areas account for a significant proportion of all killings in El Salvador between 1980 and 1991. The Commission on the Truth has obtained extensive information from the testimony of many witnesses, including several members of the armed forces and civilian members of the death squads, who admitted and gave details of their involvement at the highest levels in the organization, operation and financing of the death squads.

The undeniable impact of the extensive evidence received about the death squads leads us to share the fervent conviction of the Salvadorian people that it is crucial not only to comprehend the scope of this phenomenon in El Salvador but also to inform the international community about what it was that, by commission or omission, caused the death squads to insinuate themselves so perniciously into the formal State structure. Decisive action is needed to root out this infamous phenomenon that has so grievously compromised human rights.

Between 1980 and 1991, human rights violations were committed in a systematic and organized manner by groups acting as death squads. The members of such groups usually wore civilian clothing, were heavily armed, operated clandestinely and hid their affiliation and identity. They abducted members of the civilian population and of rebel groups. They tortured their hostages, were responsible for their disappearance and usually executed them. 416/

The death squads, in which members of State structures were actively involved or to which they turned a blind eye, gained such control that they ceased to be an isolated or marginal phenomenon and became an instrument of terror used systematically for the physical elimination of political opponents. Many of the civilian and military authorities in power during the 1980s participated in, encouraged and tolerated the activities of these groups. Although there is no evidence of latent structures for these clandestine organizations, they could be reactivated when those in high Government circles issue warnings that might trigger the resumption of a dirty war in El Salvador. Since the death squad phenomenon was the problem par excellence of that dirty war which ultimately destroyed all vestiges of the rule of law during the armed conflict, the Salvadorian Government must not only be ready and willing to prevent the resurgence of this phenomenon but also seek international cooperation in eradicating it completely. 417/

Origins and history

El Salvador has a long history of violence committed by groups that are neither part of the Government nor ordinary criminals. For decades, it has been a fragmented society with a weak system of justice and a tradition of impunity for officials and members of the most powerful families who commit abuses. At the same time, it is a country with little land, a large population and tremendous social tensions. All this has helped create a climate in which violence has been a part of everyday life.

Violence has formed part of the exercise of official authority, directly guided by State officials. This has been reflected, throughout the country's history, in a pattern of conduct within the Government and power élites of using violence as a means to control civilian society. The roots of this situation run deep. In the past 150 years, a number of uprisings by peasants and

indigenous groups have been violently suppressed by the State and by civilian groups armed by landowners.

A kind of complicity developed between businessmen and landowners, who entered into a close relationship with the army and intelligence and security forces. The aim was to ferret out alleged subversives among the civilian population in order to defend the country against the threat of an alleged foreign conspiracy. When controlling internal subversion became a priority for defending the State, repression increased.

There were several stages in the process of formation of the death squads in this century. The National Guard was created and organized in 1910 and the following years. From its inception, members cooperated actively with large landowners, at times going so far as to crack down brutally on the peasant leagues and other rural groups that threatened their interests.

Local National Guard commanders "offered their services" or hired out guardsmen to protect landowners' material interests. The practice of using the services of "paramilitary personnel", chosen and armed by the army or the large landowners, began soon afterwards. They became a kind of "intelligence network" against "subversives" or a "local instrument of terror".

In other words, from virtually the beginning of the century, a Salvadorian State security force, through a misperception of its true function, was directed against the bulk of the civilian population. In 1932, National Guard members, the army and paramilitary groups, with the collaboration of local landowners, carried out a massacre known as "La Matanza", in which they murdered at least 10,000 peasants in the western part of the country in order to put down a rural insurrection.

Between 1967 and 1979, General José Alberto Medrano, who headed the National Guard, organized the paramilitary group known as ORDEN. 418/ The function of this organization was to identify and eliminate alleged communists among the rural population. He also organized the national intelligence agency, ANSESAL. These institutions helped consolidate an era of military hegemony in El Salvador, sowing terror selectively among alleged subversives identified by the intelligence services. In this way, the army's domination over civilian society was consolidated through repression in order to keep society under control. During those years of military dictatorship, the Government kept itself in power basically by using "selective violence".

The reformist coup by young military officers in 1979 ushered in a new period of intense violence. Various circles in the armed forces and the private sector vied for control of the repressive apparatus. Hundreds and even thousands of people perceived as supporters or active members of a growing guerrilla movement - the Frente Farabundo Martí para la Liberación Nacional (FMLN) - were murdered. Members of the army, the Treasury Police, the National Guard and the National Police formed "squads" to do away with enemies. Private and semi-official groups also set up their own squads or linked up with existing structures within the armed forces.

The Commission on the Truth received testimony describing this phenomenon of local violence, such as that which occurred in the village of Cojutepeque and

in the towns of San Rafael de los Cedros, El Rosario and Monte San Juan in the south-eastern part of the Department of Cuscatlán. In this area, civil defence forces, soldiers from the local military detachment, members of the National Guard and civilian members of ORDEN took part in death squads that killed hundreds of people. In the Second Court of Cojutepeque, the judge showed the court register for 1980, which listed 141 cases of homicide. He said that 2,000 people had been murdered in the Department of Cuscatlán that year and that probably less than 20 per cent of those murders had been registered in court.

It should be said that, while it is possible to differentiate the armed forces death squads from the civilian death squads, the borderline between the two was often blurred. For instance, even the death squads that were not organized as part of any State structure were often supported or tolerated by State institutions. Frequently, death squads operated in coordination with the armed forces and acted as a support structure for their activities. The clandestine nature of these activities made it possible to conceal the State's responsibility for them and created an atmosphere of complete impunity for the murderers who worked in the squads. This mentality and actual exercise of impunity is a danger for Salvadorian society.

Two cases illustrate the composition and operation of the death squads during this stage: the group around Major D'Aubuisson and the death squads that operated out of the S-II or C-II intelligence sections of military institutions. The Commission on the Truth considers it appropriate to describe these two groups because their activities caused anxiety, fear and great harm to civilian society in El Salvador. These, of course, were not the only death squads active in the country.

THE GROUP HEADED BY FORMER MAJOR D'AUBUISSON

The 1979 coup d'etat altered the political landscape in El Salvador. 419/ One of the competing factions directly affected by the coup was a core of military officers who sought to pre-empt the groups that had staged the coup and also any reform movement. 420/ They considered the Government Junta to be "infiltrated by Marxist officers, which could be fatal for the independence and freedom of the Salvadorian fatherland if the anti-communists in the population failed to act". 421/ The leader of this faction was former Major Roberto D'Aubuisson, who up until 1979 had been third in command of ANSESAL and who, on being retired, kept part of the agency's archives.

Former Major D'Aubuisson drew considerable support from wealthy civilians who feared that their interests would be affected by the reform programme announced by the Government Junta. They were convinced that the country faced a serious threat of Marxist insurrection which they had to overcome. The Commission on the Truth obtained testimony from many sources that some of the richest landowners and businessmen inside and outside the country offered their estates, homes, vehicles and bodyguards to help the death squads. They also provided the funds used to organize and maintain the squads, especially those directed by former Major D'Aubuisson.

As the social conflict in El Salvador intensified, subversive operations increased. D'Aubuisson was well placed to provide a link between a very aggressive sector of Salvadorian society and the intelligence network and

operations of the S-II sections of the security forces. He was virtually catapulted to undisputed national political leadership of the only faction capable "of preventing a left-wing takeover". 422/ He then opted for applying what he saw as the only method used by the subversives: the illegal use of force. "An eye for an eye, a tooth for a tooth", as the saying goes.

D'Aubuisson arranged meetings between powerful civilians and economic interests and groups in the armed forces, thereby combining two elements in a strategic relationship: the input of resources (money, vehicles, weapons, homes, etc.) by civilians and the definition of a political line for the operations of the S-II intelligence sections. This gave political meaning and purpose to the attacks on and intimidation of civilian opponents and individuals suspected of collaborating with or belonging to the guerrilla movement.

For D'Aubuisson, having access to intelligence reports was of the utmost importance, because it served the cause and the functioning of his political plans. He lost no opportunity to infiltrate the security forces and the armed forces and elicit information from them. In line with D'Aubuisson's political project, all such information was used for "direct action", which explicitly included assassination attempts on individuals, abductions, "recovery of funds" and sabotage. 423/

After the assassination of Monsignor Romero, which, in very closed circles, D'Aubuisson took credit for having planned (see the case of the assassination of Archbishop Romero), his prestige and influence grew among the groups that wielded economic power, gaining him further support and resources. The San Luis estate incident and his temporary stay in Guatemala did not interrupt his political plans, since it was in Guatemala that he was able to establish contacts with internationally linked anti-communist networks and organizations and individual anti-communists such as Mario Sandoval Alarcón, Luis Mondizabal and Ricardo Lao.

From Guatemala, D'Aubuisson continued to plan and direct numerous attacks by groups identified as "death squads" and, on his return to El Salvador, had access to sources which kept him permanently supplied with abundant, up-to-date intelligence information from most armed units or territorial districts, whose leaders shared his political views. They also offered him actual logistical support for his activities, seconding and rotating troops for his personal protection and supplying weapons.

Although members of the Armed Forces Joint Staff knew about this steady leak of information, not only was nothing ever done to control it but intelligence leaks were even organized intentionally: in fact, there were serving members of the armed forces who participated actively in D'Aubuisson's group.

There is substantial evidence that D'Aubuisson operated during this period through concealed channels in which civilians and both serving and discharged members of the armed forces mixed politics, murder and the defence of their own economic interests in their zeal to combat both the peaceful and the armed opposition.

One of those closest to D'Aubuisson was his Chief of Security, Héctor Antonio Regalado. The Commission on the Truth obtained sufficient evidence to conclude that Regalado not only formed his own death squad in the town of Santiago de María but also used to coordinate and train D'Aubuisson's networks in the capital. Regalado ran D'Aubuisson's death squad from his office in the National Assembly, where he was Chief of Security when D'Aubuisson was President of the Assembly. 424/

DEATH SQUADS OPERATING IN THE S-II INTELLIGENCE SECTIONS

In many armed forces units, the intelligence section (S-II) operated on the death squad model. Operations were carried out by members of the armed forces, usually wearing civilian clothing, without insignias, and driving unmarked vehicles.

The Salvadorian armed forces also maintained within the Joint Staff under Department 5 - Civilian Affairs, a secret, clandestine intelligence unit for the surveillance of civilian political targets, which received information from the S-II sections of each military unit or security force. The purpose of this unit was to obtain information for the planning of direct actions that included the "elimination" of individuals. In some cases, such plans were transmitted as actual orders to operational units in the various security forces or the armed forces themselves.

The following is only one example of the many death squads of this kind.

The death squads of the National Guard Intelligence Section

Testimony and information received by the Commission on the Truth from former members of the S-II section of the National Guard show that the murder of Rodolfo Viera, President of the Salvadorian Institute for Agrarian Reform (ISTA), and two United States advisers in January 1981 was not an isolated event. Members of this section, with the complicity of economically influential civilians, operated as a death squad dedicated to eliminating political opponents and people considered to be supporters of the armed left wing.

A group of extreme right-wing civilians that included Hans Christ, Ricardo Sol Meza, Constantino Rampone and Ernest Panamá acted as "advisers" to the S-II section of the National Guard and influenced its work. They often visited headquarters to meet with the Chief of Section II, Major Mario Denis Morán, and his second-in-command, Lieutenant Isidro López Sibrián. On various occasions, they provided money and weapons. There is also evidence and testimony that Argentine nationals frequented S-II headquarters and were commissioned by the above-mentioned group of civilians to carry out assignments that included murders.

Information from a wide variety of sources also indicates that Major Morán, Lieutenant López Sibrián and Captain Eduardo Avila - all three of whom held leadership positions in the S-II were connected with it - were members of death squads with links to the civilians mentioned.

The Intelligence Section had subsections such as operations and intelligence. Within the intelligence subsection, there was a smaller group in

charge of "dirty work", which specialized in interrogations, torture and executions. This group enjoyed the full confidence of its superiors and acted as a special corps in the service of Morán and López Sibrián, who were numbers one and two respectively in the S-II. This group comprised, inter alia, Rodolfo Orellana Osorio, Enoc Abel Campos ("Heidi"), René Mauricio Cruz González, Oscar Reinaldo Bonilla Monge and Mario Ernesto Aparicio. The group did not observe the hierarchical chain of command but took orders only from Morán and López Sibrián, and its members came and went at will.

FINDINGS

Because of the clandestine nature of their operations, it is not easy to establish all the links existing between private businessmen and the death squads. However, the Commission on the Truth has absolutely no doubt that a close relationship existed, or that the possibility that businessmen or members of moneyed families might feel the need and might be able to act with impunity in financing murderous paramilitary groups, as they did in the past, poses a threat to the future of Salvadorian society.

At the same time, it must be pointed out that the United States Government tolerated, and apparently paid little official heed to the activities of Salvadorian exiles living in Miami, especially between 1979 and 1983. According to testimony received by the Commission, this group of exiles directly financed and indirectly helped run certain death squads. It would be useful if other investigators with more resources and more time were to shed light on this tragic story so as to ensure that persons linked to terrorist acts in other countries are never tolerated again in the United States.

1. The State of El Salvador, through the activities of members of the armed forces and/or civilian officials, is responsible for having taken part in, encouraged and tolerated the operations of the death squads which illegally attacked members of the civilian population.

2. Salvadorian institutions must make serious efforts to investigate the structural connection that has been found to exist between the death squads and State bodies. The fact that there are hundreds of former civil defence members in rural areas who are still armed is particular cause for concern. These people could easily mobilize to commit new acts of violence in future if they are not clearly identified and disarmed.

3. It is especially important to call attention to the repeated abuses committed by the intelligence services of the security forces and the armed forces. It is crucial for the future of El Salvador that the State pay attention to the use of intelligence services and to the exploitation of this arm of the Government to identify targets for murder or disappearance. Any investigation must result both in an institutional clean-up of the intelligence services and in the identification of those responsible for this aberrant practice.

4. The lack of effective action by the judicial system was a factor that reinforced the impunity that shielded and continues to shield members and promoters of the death squads in El Salvador.

5. The links of some private businessmen and moneyed families to the funding and use of death squads must be clarified.

6. The Government must recognize that, given their organizational structure and the fact that they possess weapons, there is a serious danger that the death squads may become involved, as has happened in some cases, in illegal activities such as drug trafficking, arms trafficking and abductions for ransom.

7. The issue of the death squads in El Salvador is so important that it requires special investigation. More resolute action by national institutions, with the cooperation and assistance of foreign authorities who have any information on the subject, is especially needed. In order to verify a number of specific violations and ascertain who was responsible, it will be necessary to investigate the serious acts of violence committed by death squads on a case-by-case basis.

3. ZAMORA

SUMMARY OF THE CASE

Lawyer Mario Zamora Rivas, a leader of the Christian Democratic Party and Chief State Counsel of the Republic, was murdered at his home on 23 February 1980.

Considered one of his party's most important leaders, Zamora was also a major public figure outside the party; given the political violence in the country, this exposed him to reprisals.

Members of a security force were responsible for Zamora's murder, which forms part of a pattern of conduct adopted by such forces in their illegal activities. Although the Commission has no doubt about the details of the murder, the identity of the murderers cannot be established from the testimony, investigations, evidence and proceedings on the case.

The Government did not make a proper investigation which would have resulted in the identification and punishment of the guilty parties.

DESCRIPTION OF THE FACTS 425/

Background

The Christian Democratic Party (PDC) joined other centrist and centre-left parties in the first Government Junta which overthrew General Romero in October 1979.

The Christian Democrats did not withdraw from the Government, as other groups did, and in December 1979 they joined the second Revolutionary Government Junta.

This attitude drew the opposition of Zamora and other leaders within the party, who believed that the armed forces did not offer sufficient guarantees for their political project.

As a condition for remaining in the second Junta, the Christian Democratic Party (PDC) proposed a meeting with the Armed Forces Joint Staff at the highest level. It presented a document on the violations being committed against its members and stated the bases for the party's relationship with the armed forces. One of the proponents of this strategy was Mr. Zamora. The armed forces maintained that they could not respond to the document because it contained serious accusations, and they asked for time to consider it. 426/

Other evidence submitted to the Commission suggests that Zamora had begun talks aimed at opening a dialogue with Cayetano Carpio, 427/ leader of the Fuerzas Populares de Liberación (FPL), a party to the left of PDC.

The PDC Convention, which was scheduled to take place the day after Zamora's assassination, was to have heard an explanation of the choices facing the Christian Democratic Party at that moment in time.

Zamora was the only party leader strong and persuasive enough to be able to alter the course of the policy of alliances pursued by the party, then headed by Mr. Duarte, 428/ and the importance of this in Salvadorian public life was well understood.

A few days before the assassination, Major Roberto D'Aubuisson publicly accused Zamora and other PDC leaders of being communists and members of the guerrilla group FPL. 429/ Because of this, Zamora, in his capacity as a public official, filed a complaint of defamation against D'Aubuisson with the Criminal Court, basing his right to do so on the duty of any public official to challenge an unfounded accusation before the courts. According to testimony, this was the first complaint lodged in El Salvador in an attempt to contain the far right through the use of criminal proceedings.

Two days before Zamora's assassination, two staff members of the Office of the Chief State Counsel were riddled with bullets while driving an official car. Some testimony claims that the shooting was a mistake and that Zamora was the intended target.

The facts

Mr. Zamora was at a party in his home with approximately seven other people. The party ended at midnight. Without warning, a group of six individuals entered the victim's house from the roof. Their faces were covered by ski masks and they carried small arms with silencers and some rifles. They immediately forced everyone there to lie down on the floor.

They demanded the keys to the front gate which Aronette, Zamora's wife, 430/ said she did not have. The group's leader spoke with a foreign accent and asked specifically for Mario Zamora. Zamora identified himself; they made him get up and took him to another room, while turning up the volume of the music. After killing Zamora, they left the house in an orderly manner.

Zamora's brother, Rubén 431/ lived in the house next door and had gone home to bed moments before the armed men entered. He was woken by shouting and thought that people at the party had drunk too much. He decided to go over to his brother's house but at his wife's request he telephoned instead; the line was dead. 432/

When the assailants left, the rest of the people in the house began to look for Mario Zamora and to telephone party leaders, police authorities and Government officials, including then Colonel Eugenio Vides Casanova, Director-General of the National Guard. At that point, the telephone was working normally. At first, they thought that Zamora had been abducted, but when they searched the house, they found his body riddled with bullets, in the bathroom.

It was approximately three to four hours after the murder was reported that the first security forces patrol arrived to conduct the preliminary investigation.

Although judicial proceedings were instituted on this case, no one was ever accused of the crime and the case was finally closed in 1981.

Analysis

The operation was carried out with extreme precision and skill in order to eliminate the victim without letting the identity of the killers be known.

The Commission has received sufficient evidence that the operation was carried out by the intelligence section of a State security force without consulting the Intelligence Department of the High Command, the institution which usually decided on this type of operation. The evidence also shows that the same security force had devised a plan for eliminating the victim and that the Intelligence Department of the High Command knew all about it. The security force repeatedly requested approval for the plan and when it did not receive the go-ahead, decided to proceed without authorization.

The High Command's reaction to the incident was to request military intelligence to verify internally who had carried out the operation. According to the information received, the purpose of the investigation was to establish whether the murder had been committed by one of the security forces, a death squad or a gang of kidnappers.

The decision by the security force to go ahead without authorization would explain the alleged involvement of foreign personnel in the operation, as a strategy to conceal identities and obstruct a subsequent investigation by the High Command itself or by any other security force. Furthermore, there is sufficient evidence that some security forces used people from other countries, for instance, Argentina and Nicaragua, to do the "dirty work" of eliminating political opponents.

Although the killers did not know Zamora personally, they were aware of his position and prestige; it was clear that the plan was devised in such a way as to minimize the risks of the operation, so as to prevent any subsequent public reaction.

FINDINGS

Based on the investigation it made and the testimony it received, the Commission believes it has sufficient evidence to conclude that Mr. Zamora was assassinated by members of a State security force in an operation decided on by that force and carried out as part of its illegal activities.

Likewise, the Commission has sufficient evidence to affirm that the Intelligence Department of the High Command established precisely which security force had committed the crime and that the military hierarchy at that time kept this information secret in order to conceal the identity of the perpetrators and made no report to the proper authorities, with the result that the necessary investigation was never made.

4. TEHUICHO

SUMMARY OF THE CASE

On 23 July 1980, 13 inhabitants of El Bartolillo hamlet in Tehuicho canton were executed by heavily armed civilians who identified themselves as guerrillas. Other people died in the surrounding area.

The justice of the peace arrived at the scene the next morning accompanied by troops of the Artillery Brigade. He left without carrying out the required procedures. For three days, soldiers prevented the burial of the bodies.

The Commission finds the following:

(a) On 23 July 1980, in Tehuicho canton, 13 civilians were executed by a death squad consisting of members of the "Lieutenant Colonel Oscar Osorio" Artillery Brigade and members of the civil defence unit for the San Juan Opico district.

(b) Troops from the Artillery Brigade went to the scene the next day and for three days prevented the burial of the victims.

(c) The justice of the peace did not carry out the procedures required by law. Nor did he institute criminal proceedings to investigate what had happened.

(d) Miguel Lemus, a former member of the local civil defence unit participated as a member of the death squad.

(e) Carlos Azcúnaga Sánchez, now a lieutenant colonel, planned the crime; his motive was personal revenge.

DESCRIPTION OF THE FACTS 433/

The collective execution

Shortly after midday on 23 July 1980, a group of approximately 100 civilians arrived at El Bartolillo hamlet in Tehuicho canton. Their faces were painted and they were dressed as peasants. They were very well-armed and dispersed throughout the canton. Witnesses identified Miguel Lemus, who was a civil defence member at the time.

They identified themselves as guerrillas and called a meeting on the football field, supposedly to distribute weapons. As the operation proceeded, they started to force people to assemble.

The villagers congregated on the sports field, where they were blindfolded. The strangers then identified themselves as a "death squad" and accused the villagers of having links with the guerrillas.

They proceeded to make a selection. Apparently they had a list. "Orejas" 434/ identified people on the list and singled out 14 of them, 12 men

and 2 women. The men were taken to a ravine, the two women were taken elsewhere. Shots were heard. Some houses were looted and burned.

The bodies of the women and the men were found in the course of the night. There was physical evidence that they had been tortured.

On returning to their homes, the survivors found the words "death squad" painted on a wall.

Background

One year before the incident, a private dispute had arisen over the ownership of a property between Pedro Franco Molina, a villager from Tehuicho canton who supported the guerrillas, and Antonio Azcúnaga, a villager from Los Amates canton who was the father of then Captain Carlos Azcúnaga Sánchez. The dispute intensified when it was rumoured that Franco had offered a reward for Antonio Azcúnaga's death.

In October 1979, according to testimony, a group of guerrillas murdered Antonio Azcúnaga.

There was information that the group was from Santa Ana, but villagers from Tehuicho canton, including Pedro Franco, were also blamed. Carlos Azcúnaga made various threatening comments.

Subsequent events

Uniformed soldiers from the "Lieutenant Colonel Oscar Osorio" Artillery Brigade, accompanying justice of the peace Rodolfo Sánchez 435/ and the forensic doctor, went to the scene of the incident the following day. The soldiers prevented the villagers from burying the bodies. Neither the justice of the peace nor the forensic doctor carried out the required procedures before leaving the canton. No judicial investigation was undertaken.

Troops remained in the area for three days and prevented the burial of the bodies. The villagers buried the bodies in a mass grave as soon as the soldiers left.

Subsequently, then Captain Carlos Azcúnaga Sánchez, according to witnesses, made comments incriminating himself. When he appeared before the Commission, however, he denied that he had participated in the incident.

FINDINGS

The Commission finds the following:

1. There is substantial evidence of the following:

(a) On 23 July 1980, in Tehuicho canton, 13 civilians were executed by a death squad consisting of members of the "Lieutenant Colonel Oscar Osorio" Artillery Brigade and members of the civil defence unit for San Juan Opico district.

(b) Troops from the Artillery Brigade went to the scene the next day and stayed there for three days and prevented the burial of the victims.

(c) The justice of the peace did not carry out the required procedures, or institute criminal proceedings to investigate what had happened.

2. There is sufficient evidence of the following:

(a) Miguel Lemus, a former member of the local civil defence unit, participated as a member of the death squad.

(b) Carlos Azcúnaga Sánchez, now a lieutenant colonel, planned the massacre; his motive was personal revenge.

5. VIERA, HAMMER AND PEARLMAN

SUMMARY OF THE CASE

On the night of 3 January 1981, in the Sheraton Hotel in San Salvador, two National Guard agents killed José Rodolfo Viera Lizama, President of the Salvadorian Institute for Agrarian Reform (ISTA), and Michael P. Hammer and Mark David Pearlman, United States advisers from the American Institute for Free Labor Development (AIFLD).

The actual murderers, Santiago Gómez González and José Dimas Valle Acevedo, who were National Guard agents, were convicted and later released under the 1987 Amnesty Act. The other individuals involved in planning and ordering the murders, Lieutenant Rodolfo Isidro López Sibrián, second-in-command of the Intelligence Section of the National Guard, Captain Eduardo Ernesto Alfonso Avila and businessman Hans Christ, were never convicted.

The Intelligence Section of the National Guard had planned to eliminate Viera months before his murder. National Guard agents carried out the murders in the manner characteristic of the death squads.

Lieutenant Colonel Mario Denis Morán Echeverría, then Chief of the Intelligence Section of the National Guard, covered up information about the murders, and Judge Héctor Enrique Jiménez Zaldívar allowed one of the suspects to disguise himself so as to conceal his identity.

DESCRIPTION OF THE FACTS 436/

The agrarian reform and the death threats

When the General Secretary of the Union Comunal Salvadoreña (UCS), Rodolfo Viera, was murdered, he was also President of ISTA, a Government agency set up to carry out the agrarian reform programme. Michael P. Hammer and Mark David Pearlman, both of them officials of AIFLD, were in El Salvador to provide support and technical assistance for the agrarian reform process.

As President of ISTA and General Secretary of UCS, Viera was viewed as a dangerous adversary by those who were opposed to the agrarian reform. He received death threats on a number of occasions. In May 1980, the Ejército

Secreto Anticomunista referred to Viera as a "Communist traitor" who should be eliminated by the "patriots" who were fighting for a Government that would respect "private property". There were two attempts to murder him in 1980. 437/ There is sufficient evidence that they were planned by Section II of the National Guard.

The murders of Viera, Hammer and Pearlman 438/

It is not clear whether those who planned the murders set the specific place and time in advance. However, there is full evidence that they did take advantage of the unexpected opportunity in the Sheraton Hotel to murder people who were a previously selected target.

On the night of 3 January 1981, López Sibrián ordered Valle Acevedo, a National Guard agent, to accompany him to the home of businessman Hans Christ. 439/ López Sibrián 440/ was carrying a 9-mm pistol and an Ingram sub-machine-gun 441/ obtained from the National Guard depot. 442/ At approximately 10 p.m., Christ, López Sibrián and Avila arrived at the hotel and went to eat in the hotel restaurant.

Viera, Hammer and Pearlman arrived sometime after 10 p.m. They went into the restaurant where Christ, Avila and López Sibrián were sitting. Since the restaurant was full, they asked for somewhere more private. An employee recommended the Americas room, which is spacious. Christ recognized Viera and commented to Avila: "Look! There's that son of a bitch!" 443/ Avila said that someone in the group commented that he had grown a beard and that it would be good if he were dead. 444/ Avila also mentioned that when López Sibrián saw Viera he said that that was a good opportunity to kill him. 445/ At least one of the three left the table and watched where Viera's group was going. 446/

Moments later López Sibrián, Avila and Christ left the hotel, went to the parking lot and got into a car. There, they told Valle Acevedo to kill the President of ISTA and the other two, 447/ but he refused to do the job alone. 448/ López Sibrián got out of the car, went back to the parking lot and went over to National Guard agent Gómez González, who was watching Morán's vehicle. López Sibrián told him to go with him. 449/ When Gómez González replied that he could do nothing without Major Morán's authorization, 450/ López Sibrián went into the hotel, returned immediately and told Gómez that Morán had authorized him to accompany him. 451/

López Sibrián and Gómez González then walked towards Sibrián's vehicle, in which Valle Acevedo, Christ and Avila were sitting. 452/ López Sibrián ordered Valle Acevedo and Gómez González to accompany Christ to the hotel and kill the three men there. 453/ He also gave Gómez González the 9-millimetre Ingram sub-machine-gun, while Avila gave Valle Acevedo another .45-millimetre sub-machine-gun and a khaki sweater to conceal the weapon. 454/ Christ told them that he would identify the men. 455/

The two National Guard agents entered the hotel behind Christ, who showed them where Viera, Hammer and Pearlman were sitting. 456/ They waited only a few moments, then Valle Acevedo and Gómez González opened fire on Viera and his two companions. 457/ There is sufficient evidence, based on the wounds received and

the place where the bodies were, that, in addition to Viera, both Hammer and Pearlman were a target of the gunmen.

The two gunmen left the hotel immediately and escaped in López Sibrián's vehicle to a house near the auxiliary funeral service, followed by Avila in his vehicle. 458/ There, they returned the weapons to their respective owners 459/ and López Sibrián then ordered them to return to National Guard headquarters. 460/ After the murders of Viera, Hammer and Pearlman, it became known in the National Guard that members of Section II, including Valle Acevedo and Gómez González, had committed the murders. 461/

On 14 February 1986, five years after the murder, the two agents were convicted and sentenced to 30 years in prison. On 19 December 1987, they were released under the Amnesty Act. The case against Avila was dismissed for the same reason. 462/

The investigation

The seven years of investigation of the murders of Viera, Hammer and Pearlman are well documented elsewhere and there is no need to review them here. However, two aspects of this incident warranted careful consideration by the Commission.

The role of Major Morán

There is substantial evidence that Major Morán, then Chief of Intelligence of the National Guard, learnt, after the murders, that his second-in-command, López Sibrián, had ordered two guards in the unit he commanded to carry them out. Morán also neglected to inform the appropriate authorities of those facts. 463/

It is also clear that Morán's role in the murders was never properly investigated. One of the convicted guards said that Major Medrano, who headed the military investigation of the case, told him to blame López Sibrián, 464/ apparently so as not to implicate his superior, Morán. 465/ Furthermore, there is no indication that when the Commission for the Investigation of Criminal Acts reopened the case in 1985, it investigated Morán's role in the murders, even though it had received evidence that Morán participated in a meeting of the Intelligence Section of the National Guard on 3 January, when the murder may have been planned. The Commission for the Investigation of Criminal Acts was also given evidence that on 5 January, Morán received payment for completing a "job".

The identification of López Sibrián

Although the testimony gathered by the Medrano commission shed new light on López Sibrián's role in the murders, there is full evidence that Judge Jiménez Zaldívar cooperated actively with López Sibrián by allowing him to disguise himself 466/ so that it was impossible for a key witness to recognize him. The next day, Judge Jiménez Zaldívar ordered López Sibrián released for lack of evidence. 467/

FINDINGS

The Commission finds the following:

1. There is full evidence that on 3 January 1981, José Dimas Valle Acevedo and Santiago Gómez González killed José Rodolfo Viera, Michael Hammer and Mark David Pearlman in the Sheraton Hotel.

2. There is full evidence that Lieutenant López Sibrián was involved in planning the operation to murder Viera, Hammer and Pearlman and in ordering two members of the National Guard to carry it out. He also gave a weapon to Gómez González and helped the killers escape from the scene of the crime.

3. There is full evidence that Captain Eduardo Avila was involved in planning the murder operation and collaborated with López Sibrián in carrying it out.

4. There is sufficient evidence that Hans Christ 468/ was involved in planning the murder operation and assisted in carrying it out.

5. As to the role of Lieutenant Colonel Mario Denis Morán, there is substantial evidence that he covered up the murders by neglecting to report the facts.

6. There is full evidence that Judge Héctor Enrique Jiménez Zaldívar cooperated with the main suspect, López Sibrián, hindering his identification which would have led to the institution of criminal proceedings.

E. VIOLENCE AGAINST OPPONENTS BY THE FRENTE FARABUNDO MARTI PARA LA LIBERACION NACIONAL

This section deals with the use of violence by FMLN against real or alleged opponents in violation of the rules of international humanitarian law and international human rights law. It covers the use of violence against non-combatants and also the execution of alleged criminals without due process.

The section begins with a representative case, the execution of mayors in conflict zones. Then, after an explanation of the pattern observed in this type of violence, an account follows of some of the cases attributed to FMLN which had a major impact on Salvadorian society. In some cases, it has not been possible to prove who planned the attacks, in others it is impossible to determine, or to determine with certainty, who carried them out.

Lastly, this section includes a case which, in the Commission's view, is an isolated incident which does not conform to any pattern of unlawful use of violence. The section concludes with the Commission's findings.

1. ILLUSTRATIVE CASE: SUMMARY EXECUTION OF MAYORS 469/

SUMMARY OF THE CASE

Between 1985 and 1988, a large number of mayors of towns situated in conflict zones were executed, without any kind of a trial, by the Ejército Revolucionario del Pueblo (ERP), one of the organizations in FMLN. These executions were carried out pursuant to a policy which FMLN has openly acknowledged.

The present report describes 11 executions, but there were more than that.

The Commission finds the following:

1. The FMLN General Command approved and adopted a policy of murdering mayors whom it considered to be working against it.

2. The ERP leadership carried out the policy and ordered its local commanders to murder mayors whom it considered to be working against FMLN.

3. The following persons, among others, were part of the ERP leadership at various times when mayors within territory under ERP control were murdered, and they were parties to the decisions to carry out - and are therefore responsible for - those summary executions: Joaquín Villalobos ("Atilio"), Jorge Meléndez ("Jonas"), Ana Sonia Medina ("Mariana"), Mercedes del Carmen Letona ("Luisa"), Ana Guadalupe Martínez ("María") and Marisol Galindo.

4. Joaquín Villalobos, as General-Secretary of ERP, held the highest position in that organization and bears special responsibility for the murders of mayors by ERP.

5. Local ERP commanders, either under orders from the leadership or with its approval and backing, murdered the mayors listed in this summary.

6. The murders of mayors José Alberto López, Francisco Israel Díaz Vásquez, Pedro Ventura, María Ovidia Graciela Mónico Vargas, José Domingo Avilés Vargas, Dolores Molina, Napoleón Villafuerte, Edgar Mauricio Valenzuela and Terencio Rodríguez were part of an established pattern, based on a deliberate FMLN policy, and were carried out by local ERP commanders on orders from and with the express approval of members of the ERP leadership.

7. The mayor of Guatajiagua, José Alberto López, was murdered in October 1988, while in the power of commander "Amadeo".

8. The execution of mayors by FMLN was a violation of the rules of international humanitarian law and international human rights law.

DESCRIPTION OF THE FACTS

Execution of José Alberto López, mayor of Guatajiagua

Mr. José Alberto López was elected mayor of the town of Guatajiagua, Department of Morazán, in March 1988. According to an FMLN source after his election, López received a letter from FMLN warning him to resign and stating that it was FMLN policy to execute any mayor in the area. López replied that he would not resign.

The mayor was summoned three times by FMLN to go to the guerrilla camp in San Bartolo canton, but López never went. Out of fear, he did not stay in Guatajiagua, but usually worked in San Francisco Gotera. In any case, the mayor's office in Guatajiagua had been destroyed by the guerrillas.

On Saturday, 25 October 1988, López was at home with his wife, Leticia Canales, and their four minor children. The house was in the El Calvario district of the town of Guatajiagua. An FMLN combatant whom López knew came to the house that morning and told the mayor that his commander wanted to speak to him. Fearing what would happen if he refused a fourth time, López agreed to go. Leticia, his wife, decided to go with him and the three left for San Bartolo canton on foot.

When they reached the Gualavo river, a man in uniform carrying a rifle was waiting for them. The combatant who had brought them told the man in uniform that he had the mayor with him and handed him over. The man in uniform told the mayor's wife that she could not cross the river or go to the guerrilla camp. He told her to go home, saying that her husband would be sent back that afternoon.

On arriving at the camp, the mayor was taken to the commander, who went by the name of "Amadeo". There is sufficient proof that, after speaking to the mayor, "Amadeo" ordered his execution.

That same night, Radio Venceremos announced that FMLN had summarily executed the mayor of Guatajiagua, José Alberto López.

Execution of Francisco Israel Díaz Vásquez, mayor of Lolotique

On 2 May 1985, Francisco Israel Díaz Vásquez took office as mayor, after being elected by popular vote. There is full evidence that on 2 June that year, he was abducted by FMLN and kept hostage until 24 October, when he was released along with other mayors who had also been abducted by FMLN. He was released following negotiations in Panama between FMLN and the Government.

On 2 June 1986, Díaz resumed office as mayor. In December of that year, he received death threats from the guerrillas and resigned. However, the guerrillas believed that he was still working for the Government.

On 5 December 1988, an unknown man went to Francisco Israel Díaz's home and handed his wife a note ordering him to go the next day to the place known as "la Entrada de Tempisque", near Santa Bárbara.

Díaz left on the morning of 6 December with a neighbour. They passed the place known as "la Entrada de Tempisque" and continued on to Santa Bárbara canton, arriving around noon. Three uniformed combatants with rifles suddenly appeared and arrested Mr. Díaz. Five minutes later one of them returned and told Mr. Díaz's companion to go home because they were going to hold the mayor for several days.

The next afternoon, 7 December, two unknown men went to Lolotique church and reported that Díaz was dead and handed over his wallet containing his identity papers.

That same night, several relatives and friends of Díaz went looking for his body. When they found it, they saw that "he had been shot once, behind the ear, and that the bullet, in exiting, had shot out one eye and his teeth. On one calf there was a piece of paper saying 'summarily executed by FMLN' and, on the other, a piece of paper saying 'as a traitor'."

In October 1992, FMLN informed the Commission officially that ERP, pursuant to a policy approved by FMLN, had executed mayor Díaz.

Executions of other mayors

In its communication dated 18 October 1992, replying to a request for information from the Commission on the Truth, FMLN said that ERP, pursuant to a policy approved by FMLN, had also executed the following mayors:

Pedro Ventura, mayor of San Isidro, Department of Morazán, on 15 April 1988.

María Ovidia Graciela Mónico Vargas, mayor of San Jorge, Department of San Miguel, on 18 January 1985.

José Domingo Avilés Vargas, mayor of Santa Elena, Department of Usulután, on 8 January 1985.

Dolores Molina, mayor of Lolotiquillo, Department of Morazán, 19 August 1988.

Napoleón Villafuerte, mayor of Sesorí, Department of San Miguel, 25 November 1988.

Edgar Mauricio Valenzuela, mayor of San Jorge, Department of San Miguel, 4 March 1985.

The communication contained the text of two FMLN communiqués, dated 22 August and 26 November 1988, announcing the execution of Napoleón Villafuerte and Dolores [Molina] respectively.

Furthermore, there is sufficient evidence that on 11 May 1988, Mr. Terencio Rodríguez, mayor of Perquín, Department of Morazán, was executed without trial.

Applicable law

In considering the facts in the light of international humanitarian law and international human rights law, the Commission examined the arguments put forward by FMLN to justify its policy of executing mayors.

FMLN justified these executions on the grounds that "mayors and mayors' offices had come to engage in what were clearly counter-insurgency activities. The mayors, in close coordination with the commanders of the garrisons of the various towns, had embarked on the task of creating paramilitary forces (civil defence units) and direct repressive activity against the civilian population and had developed spy networks to detect FMLN members and supporters, or simply people opposed to the regime among the population and to obtain information about members of popular organizations and their plans; this information was then passed on to the army." It also stated that the mayors' activities affected supply lines.

FMLN went on to say that "when mass arrests of villagers, murders, repression by civil defence forces and operations by the armed forces of El Salvador based on information supplied by the mayors' spy networks began to occur, the mayors joined the ranks of those whom FMLN, since 1980, had considered military targets whose summary execution was hence legitimate: spies, paramilitary personnel, those who collaborated with the death squads and anyone whose actions triggered repression or murder of the civilian population".

The Commission does not accept these arguments. If by calling the mayors "military targets", FMLN is trying to say that they were combatants, it must be pointed out that there is nothing to support the claim that the executed mayors were combatants according to the provisions of humanitarian law.

However, whether the executed mayors might or might not at some point have been considered "military targets" is irrelevant, since there is no evidence that any of them lost their lives as a result of any combat operation by FMLN. The execution of an individual, whether a combatant or a non-combatant, who is in the power of a guerrilla force and who does not put up any resistance is not a combat operation.

There is nothing in international humanitarian law or international human rights law to prohibit belligerents from punishing, in areas under their

control, individuals who commit acts that, according to the applicable laws, are criminal in nature. In the aforesaid document, FMLN says that it considered the summary execution of "spies, paramilitary personnel, those who collaborated with the death squads and anyone whose actions triggered repression or murder of the civilian population" a legitimate action. 470/

The Commission recalls that, when punishing persons accused of crimes, it is necessary to observe the basic elements of due process. International humanitarian law does not in any way exempt the parties to a conflict from that obligation, and international human rights law does not exempt the party which has effective control of a territory from that obligation with respect to persons within its jurisdiction. On the contrary, those two sources of law expressly prohibit the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted independent and impartial tribunal attaching all the judicial guarantees generally recognized as indispensable.

In none of the cases mentioned above is there any evidence that a proper trial was held prior to the execution. Nor is there any evidence that any of the individuals died in a combat operation or that they resisted their executioners.

FINDINGS

The Commission finds the following:

1. There is full evidence that the FMLN General Command approved and adopted a policy of murdering mayors whom it considered to be working against it.

2. There is full evidence that members of the ERP leadership, among others, carried out the policy and ordered their local commanders to murder mayors whom they considered to be working against FMLN.

3. There is full evidence that the following persons, among others, were part of the ERP leadership at various times when mayors within territory under ERP control were murdered, and that they were parties to the decisions to carry out - and are therefore responsible for - those summary executions: Joaquín Villalobos ("Atilio"), Jorge Meléndez ("Jonas"), Ana Sonia Medina ("Mariana"), Mercedes del Carmen Letona ("Luisa"), Ana Guadalupe Martínez ("María") and Marisol Galindo.

4. There is full evidence that Joaquín Villalobos, as General-Secretary of ERP, held the highest position in that organization and bears special responsibility for the murders of mayors by ERP.

5. There is full evidence that local ERP commanders, either under orders from the leadership or with its approval and backing, murdered the mayors listed in this summary.

6. There is full evidence that the murders of mayors José Alberto López, Francisco Israel Díaz Vásquez, Pedro Ventura, María Ovidia Graciela Mónico Vargas, José Domingo Avilés Vargas, Dolores Molina,

Edgar Mauricio Valenzuela, Napoleón Villafuerte, and Terencio Rodríguez were part of an established pattern, based on a deliberate FMLN policy, and were carried out by local ERP commanders on orders from and with the express approval of members of the ERP leadership.

7. There is full evidence that the mayor of Guatajigua, José Alberto López, was murdered in October 1988, while in the power of commander "Amadeo".

8. The execution of mayors by FMLN was a violation of the rules of international humanitarian law and international human rights law.

2. EXTRAJUDICIAL EXECUTIONS

(a) ZONA ROSA

SUMMARY OF THE CASE

At around 9 p.m. on 19 June 1985, in an area of San Salvador known as the "Zona Rosa" where there are many restaurants, a group of armed men opened fire on a group of United States marines. The assailants were members of the Partido Revolucionario de Trabajadores Centroamericanos (PRTC), one of the organizations in FMLN. The marines, who were serving as security guards at the United States Embassy in San Salvador, were in civilian clothing and were unarmed. Four marines, nine civilians and one of the assailants died in the shoot-out. The "Mardoqueo Cruz" urban commando of PRTC claimed responsibility for the killings; FMLN defended the attack in a communiqué. In a subsequent trial, three people were tried and convicted. Two other trials were instituted for the same attack. One of them did not reach the sentencing stage, since the accused was amnestied; in the other, sentence has yet to be passed on the accused.

The Commission finds the following:

1. The attack on the United States marines was part of the FMLN policy of considering United States military personnel a legitimate target.

2. A PRTC commando carried out the attack.

3. Ismael Dimas Aguila and José Roberto Salazar Mendoza were involved in planning and carrying out the attack.

4. Pedro Antonio Andrade was also involved in planning the attack.

5. The attack on the marines in the Zona Rosa was a violation of the rules of international humanitarian law.

DESCRIPTION OF THE FACTS 471/

Background

In 1985, the General Command of the Frente Farabundo Martí para la Liberación Nacional took the decision to consider United States military

personnel in El Salvador legitimate military targets. It gave its members broad and sweeping orders to implement the decision. 472/

Planning the attack

In early June 1985, some members of the Partido Revolucionario de Trabajadores Centroamericanos (PRTC), one of the five political-military organizations in FMLN, planned an attack which they called "Yankee aggressor in El Salvador, another Viet Nam awaits you". The aim was to execute United States military personnel assigned to El Salvador and responded to the general directive to that effect issued earlier by the General Command. The attack was to be carried out by members of the "Mardoqueo Cruz" urban commando.

The commando operated from an auto repair shop in which Ismael Dimas Aguilar and his brother José Abraham were partners and from the "La Estrella" upholstery shop in which William Celio Rivas Bolaños and Juan Miguel García Meléndez were partners. The main planning meetings were therefore held in those places. 473/

The attack

At around 8.30 p.m. on 19 June 1985, six United States marines who were responsible for security at the United States Embassy sat down at an outside table at Chili's restaurant in the area known as the "Zona Rosa" in the San Benito district. They were regular customers known to the owners of restaurants and cafes in the area and to those who worked there. They used to go there in groups whenever they were off duty. 474/ After a while, two of them left the group and went to sit down at a table in the Flashback restaurant a few yards away from their companions at Chili's. 475/

At around 9 p.m., a white pick-up truck with dark stripes parked outside the La Hola restaurant; a group of some seven individuals got out and walked over to Chili's and, without warning, fired a volley of shots at United States marines 476/ Thomas Handwork, Patrick R. Kwiatkoski, Bobbie J. Dickson and Gregory H. Weber. The marines were in civilian clothing. There is no evidence that they were carrying weapons.

While the attackers were firing at the United States marines, someone returned their fire from inside Chili's and the Mediterranée restaurant. 477/

A member of the commando was wounded in the cross-fire. 478/ The following people were also shot and died at the scene: Humberto Sáenz Cevallos, lawyer, Secretary of the Faculty of Law at José Matías Delgado University; Humberto Antonio Rosales Pineda, Executive Director of Inter Data Corporation; Arturo Alonso Silva Hoff, student; José Elmer Vidal Peñalva, university student; Oswaldo González Zambroni, Guatemalan businessman; Richard Ernest Mac Ardie Venturino, Chilean executive of the WANG corporation; George Viney, United States citizen, Regional Director of WANG; and Roberto Alvidrez, United States citizen and WANG executive. Some of these people had been sitting in Chile's, others in the Mediterranée. 479/ There is no evidence that any of the civilians who died were armed. 480/ Other people at the scene were wounded.

A few minutes after the commando withdrew, staff from the United States Embassy arrived on the scene and drove the four marines to a first aid post.

At 9.30 p.m., members of the National Police arrived on the scene but, according to their report, were unable to make a satisfactory inspection because only eight of the bodies were there and the scene of the incident had already been disturbed. 481/

That same night, the other members of the commando took José Roberto Salazar Mendoza, who had been seriously wounded in the attack, to a Salvadorian Red Cross post. He died from his wound. 482/

Subsequent statements

Three days later, on 22 June 1985, the Partido Revolucionario de Trabajadores Centroamericanos (PRTC) claimed responsibility for the operation in a communiqué signed by "Fernando Gallardo" of the political and military headquarters of the "Mardoqueo Cruz" urban guerrilla commando of PRTC.

On 25 June 1985, the FMLN General Command issued a communiqué supporting the operation and asserting that the four marines were a legitimate military target. 483/ The Commission has full evidence, however, that the United States marines were not combatants. Their function was to guard the United States Embassy and there is no indication whatsoever that they took part in combat actions in El Salvador. Furthermore, international humanitarian law defines the category of "combatant" restrictively. The allegation that they were performing "intelligence functions" has not been substantiated. In any event, carrying out intelligence functions does not, in itself, automatically place an individual in the category of combatant.

In a subsequent broadcast on Radio Venceremos, Ismael Dimas Aguilar acknowledged that, as one of the military chiefs of the "Mardoqueo Cruz" urban commando responsible for the operation, he had participated in its planning and in the execution of the marines. 484/

On 28 August 1985, then President of the Republic José Napoleón Duarte held a press conference to report on the results of the investigation into what he called the "Zona Rosa Massacre". He said that three of the people responsible for the operation had been arrested. José Abraham Dimas Aguilar and Juan Miguel García Meléndez, who had planned the operation, and William Celio Rivas Bolaños, who had helped carry it out.

The judicial proceedings

On 27 August 1985, the National Guard placed the three accused at the disposal of the military court and handed over the results of the investigation, including the confession of the three defendants. 485/ Rivas and García later said that their confessions had been obtained under torture. The documents of the investigation were incomplete, since they did not include autopsy or ballistic reports, a reconstruction of events, or other reports customary in the investigation of a case of this kind. 486/

Sentence was passed only five years later, on 30 April 1991, in the court of first instance. Although it appears from the dossier that the extrajudicial confessions were generally confirmed, there is no record that the defendants ever appeared in court, that any statement was taken from them or that any effort whatsoever was made to clarify the facts.

Two years after the trial began, the defendants' lawyer requested the dismissal of proceedings against them under the 1987 Amnesty Act. 487/ On 12 November 1987, the court granted the request and dismissed all charges against the three defendants. 488/

The United States Consul General in San Salvador representing the family of one of the dead United States marines went to court to file an appeal against the amnesty. 489/ On 4 December 1987, the military court confirmed the dismissal on grounds that the offences had been political. 490/

On 22 February 1988, President Napoleón Duarte, to whom, as Commander-in-Chief of the Armed Forces, the decision of the military court was referred, overturned it on the grounds 491/ that the Zona Rosa killings were ordinary crimes of international significance and, as such, not subject to amnesty. The Supreme Court of Justice, before which the matter was brought by means of a remedy of habeas corpus, confirmed the decision.

On 30 April 1991, sentence was passed in the court of the first instance and the three defendants were found guilty; the sentence was confirmed, almost in its entirety, on 5 March by the relevant court.

On 25 September 1992, the military judge decided to wait until he had seen the report of the Commission on the Truth before ruling on the request from the defendants' lawyer that the National Reconciliation Act be applied to the defendants, saying that the report was indispensable in order to determine whether the amnesty provided for in that Act was applicable. 492/

While this trial was going on, two other defendants went on trial for the same incident.

One trial, that of Juan Antonio Morales, began in 1988. Morales confessed to the Treasury Police that he had been part of the commando that had carried out the Zona Rosa operation and he confirmed his statement to the judge of the Fifth Criminal Court. Although his version of events is substantially the same as the one given by Rivas, García and Dimas, he did not name them as having been among the participants. There was no joinder of the two trials, and he has still not been sentenced. After a number of procedural vicissitudes, those implicated were denied the benefit of amnesty. Morales is still being held. 493/

The other trial, for complicity, was instituted in 1989 before the Third Criminal Court against Pedro Antonio Andrade, nom de guerre "Mario González". 494/ This trial too was not joined to the earlier one. Unlike the other defendants, Andrade benefited from the 1987 amnesty.

The Commission has received sufficient evidence that Andrade was one of the people who planned the attack. Andrade was head of the "Mardoqueo Cruz" urban

commando at the time the incident occurred and he confessed in court to having had prior knowledge of an attack planned against "los cheles" (foreigners) and having made arrangements for a safe house and for medical care in case anyone was wounded in the operation. However, the Commission has received credible information that Andrade had a wider role in the selection of specific targets and in other aspects of the attack.

FINDINGS

The Commission finds the following:

1. There is full evidence that the attack on the United States marines was part of the FMLN policy of considering United States military personnel a legitimate target of war.

2. There is full evidence that the "Mardoqueo Cruz" urban commando of PRTC carried out the attack and that PRTC, as the organization to which this commando belongs, bears responsibility for the incident.

3. There is substantial evidence that Ismael Dimas Aguilar planned the attack and that he himself fired on the marines.

4. There is sufficient evidence that Pedro Antonio Andrade was involved in planning the attack.

5. The attack on the marines in the Zona Rosa was a violation by FMLN of the rules of international humanitarian law.

(b) ANAYA SANABRIA

SUMMARY OF THE CASE

Herbert Ernesto Anaya Sanabria, leader of the Human Rights Commission (non-governmental), was shot and killed on the morning of 26 October 1987 in the parking lot outside his home in San Salvador.

Two months later, National Police arrested a young man, Jorge Alberto Miranda Arévalo, a member of ERP, who initially stated that he had taken part in the murder as the look-out. He later retracted his confession. In 1991, a jury found him guilty and he was sentenced to the maximum penalty of 30 years in prison.

The Commission finds that:

1. For this case, it did not have sufficient time to resolve the following dilemma: the fact that there was evidence that a State security force or a death squad might have been responsible, and also evidence that the Ejército Revolucionario del Pueblo (ERP) might have been responsible for the murder of Herbert Ernesto Anaya Sanabria.

2. Miranda's trial and his treatment by the police violated his basic rights.

3. The State failed in its duty under international law to protect human rights, properly investigate the murder of Herbert Anaya and bring to trial and punish the culprits.

DESCRIPTION OF THE FACTS 495/

The murder

On 26 October 1987, Herbert Anaya was shot to death in the parking lot of his home in the Zacamil district. According to witnesses, three men took a direct part in the murder: one fired the shots, another acted as look-out for the first and the third 496/ drove the vehicle. 497/ The murderers escaped in an old, yellow pick-up truck.

Ballistic tests showed that the six cartridges had been fired from the same weapon, 498/ and also that the six bullets found had been fired from the same weapon. 499/ The Commission for the Investigation of Criminal Acts (CIHD) maintained that the bullets were not typical of the ammunition available to the armed forces of El Salvador. 500/

Background

At the time he was murdered, Herbert Anaya was general coordinator of the Human Rights Commission (non-governmental) (CDHES-NG) 501/ and used to speak out regularly against human rights violations. He was also a member of the Ejército Revolucionario del Pueblo. 502/ Before his death, he apparently advocated a peaceful solution to the armed conflict in his country. 503/

On 26 May 1986, he was arrested by members of the Treasury Police who were dressed in civilian clothing and heavily armed. 504/ He was interrogated and imprisoned 505/ until 2 February 1987, when he was released in an exchange of prisoners.

Reaction to the murder

The murder triggered a strong reaction both within El Salvador and abroad. There were demonstrations in the capital and national and international human rights groups and civilian associations expressed their concern. 506/

President Duarte asked CIHD to investigate the case and also offered a reward of 50,000 colones (US$ 10,000). 507/ The investigation did not produce any significant results, and the possibility that Anaya might have been murdered by Government forces or right-wing sectors was not seriously investigated.

Arrest and detention of Jorge Alberto Miranda Arévalo

On 23 December 1987, National Police arrested Jorge Alberto Miranda Arévalo, a member of a union of the ERP urban commandos. 508/ Miranda and a companion had attacked a truck carrying soft drinks. His companion "Carlos", who, according to Miranda's first statement, shot at Anaya, managed to escape.

Miranda was interrogated 509/ and, according to the National Police, made an extrajudicial statement confessing to having participated as look-out in Anaya's murder. According to the court dossier, that same day he led members of the National Police to arms caches.

During the first weeks of his detention, Miranda said that he had been subjected to psychological pressure. 510/ He said he had been injected with an unknown substance, 511/ and also that he had been subjected to sleep deprivation.

The Government concluded that Miranda was guilty. When the Government paid Miranda 12,000 colones on 4 January 1988, saying that the payment was being made under a programme announced in December 1987, the Minister of Justice denied that Miranda was being rewarded for taking the blame for the murder. 512/

During the first weeks of his imprisonment, Miranda received special treatment: he was interviewed on camera and visited alone by foreign reporters 513/ and also by senior officials. Miranda says he was also visited by members of the National Police and by some Venezuelans who offered him comforts if he stuck to his original statement. 514/

For its part, CIHD concluded its investigation shortly after Miranda's arrest. According to the dossier, CIHD did not pursue leads or update important information, spoke to few witnesses and did not compare the results of ballistic tests of the ammunition used in the murder with ammunition handed over by Miranda.

Judicial proceedings against Miranda

When he had been held nine days longer than the maximum time allowed by the Salvadorian Constitution without being brought before a judge, 515/ Miranda was brought before the judge of the First Criminal Court of San Salvador 516/ [on 4 January 1988], the day he received his payment from the Government. That same day, Miranda confirmed his extrajudicial statement before the judge. Nevertheless, one month later, he retracted his statement about the assassination, although he reaffirmed that he was a member of ERP. 517/

After two years during which little headway was made, the judge ordered a partial stay of proceedings in Miranda's favour in April 1990, "... because of the absence of the necessary evidence of his participation". 518/ Subsequently, the First Criminal Chamber of the First Central Section revoked the stay 519/ and brought the case to trial.

In October 1991, a jury of five persons found Jorge Miranda guilty of murder and acts of terrorism. 520/

In March 1992, the judge applied the National Reconciliation Act to Miranda in respect of the offence of acts of terrorism and subversive association, but not in respect of the murder, and gave Miranda the maximum sentence of 30 years in prison. 521/

The evidence 522/

ERP

No ERP member interviewed by the Commission has claimed responsibility for Anaya's murder, nor has any witness identified Miranda as a participant. One eyewitness who claimed to have seen the murderers from close up was unable to identify Miranda when shown a series of photographs of young men, including Miranda. 523/

Nonetheless, there is evidence that ERP and Miranda may have participated in the murder, and there are even credible motives. There were disagreements between Anaya and ERP. There is evidence that Anaya already wanted to see an end to the violence, whereas ERP had embarked on an initiative which would require violence in San Salvador.

Moreover, in his first two statements, Miranda put the blame on himself and on ERP. He had, and continues to have, a grasp of the facts. 524/

To the Commission, Miranda continued to deny his involvement. He even claimed that he had made up everything he had said about the murder and its planning. Nevertheless, he gave details of the murder and the way in which it was apparently planned that tally with other facts and that, according to our investigations, he had not given before. He provided information on: the time of a meeting held the night before the murder, where the pick-up truck came from, who obtained it and how he got to Anaya's parking lot in order to be able to act as look-out before the murder.

The Government

Salvadorian and international human rights organizations have expressed concern that the armed forces or a death squad may have killed Anaya in order to put an end to his criticisms of human rights violations. 525/

There is evidence that this could be true. According to his colleagues, Anaya received a number of direct and indirect threats from the Government throughout 1987. 526/ According to a leader of CDHES-NG, two weeks before his murder a woman who worked for the Commission was arrested by the National Police, who informed her that they knew that Anaya was the leader of the organization and that "they were going to disrupt the entire work" of the organization. 527/

Throughout the 1980s, there were constant acts of violence against CDHES-NG and Anaya was the fourth leader of the Commission to be murdered or to disappear. Not one of these cases has been satisfactorily resolved. 528/

Moreover, according to Anaya's widow, at 6.10 a.m on the day of the murder, neighbours saw a group of National Police some 200 metres from the family's house. 529/ She argues that since the police were so close by, the murders could not have been from FMLN.

FINDINGS

The Commission finds that:

1. For this case, it did not have sufficient time to resolve the following dilemma: the fact that there was evidence showing that a State security force or a death squad might have been responsible, and also evidence that the Ejército Revolucionario del Pueblo (ERP) might have been responsible for the murder of Herbert Ernesto Anaya Sanabria.

2. Miranda's trial and his treatment by the police violated his basic rights.

3. The State failed in its duty under international law to protect human rights, properly investigate the murder of Herbert Anaya and bring to trial and punish the culprits.

(c) ROMERO GARCIA, "MIGUEL CASTELLANOS"

SUMMARY OF THE CASE

Miguel Castellanos, whose real name was Napoleón Romero García, was murdered at ..30 p.m. on 16 February 1989, shortly after leaving his office in the Centro para Estudios de la Realidad Nacional (CEREN) in the Flor Blanca district of San Salvador. FMLN urban commandos machine-gunned the vehicle in which Castellanos was travelling with his bodyguard, Rafael Quijada López, on the 43 Avenida Sur and Sexta Décima calle PONENTE. Castellanos was taken to the military hospital, where he lied soon after. Quijada López received three bullet wounds, two in the legs and one in the stomach, but he survived the attack.

The attackers were not identified.

In a Radio Venceremos broadcast and in statements to the press, FMLN took responsibility for the attack.

Background

Castellanos, aged 39, had been a member of the Political Commission of the Fuerzas Populares de Liberación (FPL), one of the member organizations of FMLN, until mid-April 1985, when he was arrested by members of the National Guard. During the first days of his detention, he agreed to change his position and to collaborate with the authorities.

Before his arrest, Castellanos had been a member of the Political Commission of FPL and, in that capacity, the political and military official in charge of the special metropolitan area, as well as a member of the FMLN Joint Command in San Salvador. According to a report submitted to the Commission on the Truth by FMLN, Castellanos handled a great deal of secret information and, after his arrest in 1985, advised the National Guard and other intelligence bodies of the armed forces on matters relating to the campaign against FPL in particular and FMLN in general.

After changing his position, Miguel Castellanos started working at CEREN. He was also editor of the magazine Análisis.

Action by the Commission

The facts of the case are not in dispute. Nevertheless, the Commission examined the available evidence and sought information from FMLN, which is obtained.

The position of FMLN is that the death of Miguel Castellanos was a legitimate execution, since he was a traitor who was contributing in a direct and effective manner to repression against FMLN.

FINDINGS

Notwithstanding the arguments put forward by FMLN, international humanitarian law does not permit the execution of civilians without a proper trial.

(d) PECCORINI LETTONA

Francisco Peccorini Lettona, aged 73, a doctor of philosophy and university lecturer, was a contributor to El Diario de Hoy, a morning newspaper in El Salvador, in which he had written a number of articles opposing the activities of FMLN.

Mr. Peccorini took an active and public part in a group dedicated to what it termed "winning back" the University of El Salvador, which, in its view, had been infiltrated by guerrillas.

On 15 March 1989 in San Salvador, while driving his car, Mr. Peccorini was the target of an attack in which he was shot. He was taken to the military hospital, where he died.

At the Cocoyoc meeting, held in Mexico from 21 to 24 July 1989 between prominent persons from the United States of America and representatives of FMLN, FMLN acknowledged responsibility for Mr. Peccorini's death.

(e) GARCIA ALVARADO

On 19 April 1989, Mr. José Roberto García Alvarado, Attorney General of the Republic, was killed when a bomb planted in the car he was driving exploded. The incident occurred in the San Miguelito area of San Salvador and the two passengers in the car were injured.

At the Cocoyoc meeting in Mexico in July 1989, FMLN took responsibility for Mr. García Alvarado's death, which it attributed to the Fuerzas Armadas de Liberación (FAL), one of its member organizations.

(f) GUERRERO

SUMMARY OF THE CASE

On 28 November 1989, Mr. Francisco José Guerrero, former President of the Supreme Court of El Salvador, was assassinated in his car at the intersection of Boulevard de los Héroes and Alameda Juan Pablo II in San Salvador. One of the attackers was killed, another escaped and the third, César Ernesto Erazo Cruz, was wounded.

In the hospital, Erazo Cruz said he had killed Guerrero on orders from FMLN. He later changed his story and finally denied participating at all. When he came to trial, the jury acquitted him.

At the time of his death, Mr. Guerrero was investigating the assassination of the Jesuit priests and apparently had found evidence. One of the possible motives for his murder may have been precisely to conceal that evidence.

Mr. Guerrero died as a result of deliberate action aimed at killing him. Although César Ernesto Erazo Cruz was acquitted at the trial, there is every evidence that he participated in the assassination. The Commission tried unsuccessfully to obtain significant information both within and outside El Salvador to confirm or disprove its investigating hypotheses. Although there is sufficient evidence that Erazo Cruz was at the time an active FMLN member, a fact which suggests that a more thorough investigation of FMLN responsibility for the assassination is called for, the available evidence did not allow the Commission, on completion of its work, to reach full agreement on this case.

DESCRIPTION OF THE FACTS 530/

Mr. Francisco José Guerrero, a prominent conservative politician, was active in public life for more than three decades. 531/ He was President of the Supreme Court, worked as an adviser to President Cristiani to promote the dialogue with FMLN and was also a member of the Ministry of Foreign Affairs advisory council. 532/

Mr. Guerrero was investigating the assassination of the Jesuit priests, which took place 12 days before he was killed. He had contacted the Jesuits immediately after the crime occurred and offered to cooperate in solving it.

The death of Mr. Guerrero

On the morning of 28 November 1989, Mr. Guerrero left his house in the Escalón district with his daughter-in-law to drive her to the San Salvador judicial centre, where she worked. Mr. Guerrero was driving, his daughter-in-law was sitting in the front passenger seat, and his bodyguard, Víctor Manuel Rivera Monterrosa, was sitting in the back seat. Mr. Guerrero was usually accompanied by two bodyguards, but that morning one of them did not show up.

They reached the intersection of Boulevard de los Héroes and Alameda Juan Pablo II without incident, and there they stopped at a traffic light near the "Biggest" restaurant. A man - later identified as Angel Aníbal Alvarez Martínez - ran up along the pavement and stationed himself behind Mr. Guerrero's car. Another unidentified man stationed himself to the left of the car and a third, later identified as César Ernesto Erazo Cruz, stood on the right side. Without addressing a word to the occupants of the car, they opened fire with their weapons. 533/ Mr. Guerrero's bodyguard noticed the men before they aimed their first shots at him, but only had time to react and counter-attack. 534/

According to witnesses, the attackers had followed Mr. Guerrero to the intersection in a yellow Volkswagen, from which they emerged and surrounded him. Other witnesses asserted that the attackers arrived on foot. 535/

The vehicle was hit from three sides by nine bullets. 536/ Apparently, the attackers fired first at Mr. Rivera Monterrosa, who was wounded, lost control

for a few seconds, then managed to fire back at his attackers with a 357 calibre revolver and an M-16 rifle. At that moment, he was hit again and emptied the entire magazine at the attackers. 537/

Mr. Guerrero was hit by five bullets. 538/ All the bullets extracted from his body were 45 calibre, 539/ three of them having been fired from a revolver which, according to the person who handed it over to the police two days later, was found on the body of Alvarez Martínez. 540/ The other two bullets had been fired from another weapon that was never recovered.

Erazo Cruz and Alvarez Martínez were standing on the pavement in front of the "Biggest" restaurant when on-the-spot witnesses saw at least one man get out of a Cherokee-type vehicle two or three cars behind that of Mr. Guerrero, and fire a rifle, apparently an M-16, at Erazo Cruz and Alvarez Martínez. 541/ Alvarez Martínez was killed instantly. 542/ Erazo Cruz was wounded. 543/ The calibre of the bullet extracted from the body of Alvarez Martínez was 5.56 mm, 544/ which is the calibre used in the M-16.

The third attacker fled the scene and has never been identified. The Cherokee picked up the man with the M-16 and likewise left the scene for an unknown destination. 545/

Mr. Guerrero and his bodyguard were taken to the Medical Surgical Hospital, where Mr. Guerrero died the same day. His daughter-in-law survived the attack unharmed.

Subsequent events

The paraffin tests performed on Alvarez Martínez and Erazo Cruz the following day by officers of the National Police were positive. 546/

Erazo Cruz stated at the National Police medical clinic that he was a member of the FPL urban commandos and had participated in the assassination on the orders of the FMLN command, transmitted through another member of the organization. According to this statement, all he knew was that an important politician was to be assassinated. On further questioning, he changed his story and said that a certain "Manuel" had simply told him they were going to commandeer a vehicle. 547/

In his second statement, made to the judge of the Sixth Criminal Court, Erazo Cruz confirmed his first statement, with some changes. According to this version, "Manuel" had told him they were going to commandeer a vehicle with tinted glass windows. They had gone up and down the boulevard several times without finding the vehicle. When they came to the corner where the "Biggest" restaurant is situated, his two companions suddenly started running towards a vehicle. "Manuel" took up position behind the vehicle and shot into the back of it, while "Efraín" stood in front and shot into the front of it.

According to Erazo Cruz, when this happened he ran to the pavement in front of the "Biggest" restaurant. From there he saw a man with a rifle get out of a car behind the vehicle at which "Manuel" and "Efraín" were firing and shoot at "Manuel". At that moment he himself felt an impact and fell to the ground. He did not know where "Efraín" went or whether he had been wounded. 548/

On the basis of these statements, the trial judge ordered that Erazo Cruz be detained pending trial. 549/ After recovering from his wounds, he was held in the Mariona prison. This prison was attacked by FAL members; Erazo Cruz escaped with other prisoners and reached an FMLN camp. 550/

In September 1991, troops of the Atlacatl Battalion wounded and captured Erazo Cruz. The soldiers took him to hospital and he was subsequently committed to prison.

The public hearing was held on 21 July 1992 in the Sixth Criminal Court. Erazo Cruz was accused of aggravated homicide, 551/ causing grievous bodily harm, 552/ being a member of a subversive association, 553/ and escape involving the use of violence. 554/ During the trial, Erazo Cruz denied participating in the crime, despite his judicial confession. He claimed that he was passing by the scene of the crime when he found himself caught in the gunfire; he was wounded and was, he alleged, forced to confess that he was responsible.

The jury acquitted Erazo Cruz of the charges of homicide and causing grievous bodily harm. 555/ He was freed in mid-August 1992.

Responsibility of the guerrillas and participation of Erazo Cruz

FMLN admitted a certain degree of responsibility for the assassination of Mr. Guerrero. Shortly after the crime, FMLN spokesmen said he had been killed when the members of the urban commandos tried to steal his car. This version coincides with parts of the original statements by Erazo Cruz, including his judicial confession.

Furthermore, the 45 calibre and 9 mm revolvers used in the assassination were typical of the weapons used by the urban commandos. Moreover, although Erazo Cruz was acquitted and denied any participation when he appeared before the Commission, there is substantial evidence that he took part in the crime. An eyewitness who had not spoken before identified him as one of the attackers. The paraffin test was positive, showing he had fired a gun. There are also contradictions in parts of his testimony to CIHD. 556/

The FMLN members interviewed by the Commission said that they did not know Erazo Cruz before the assassination and did not have any information on Alvarez Martínez and the other participants, nor did they know anything about the crime. Nevertheless, the Commission received reliable evidence indicating that Erazo Cruz belonged to the guerrilla forces at the time when Mr. Guerrero was assassinated.

On the other hand, the Commission received information to the effect that Mr. Guerrero was assassinated because he had obtained incriminating evidence on those allegedly responsible in the Jesuit case. This version was made public in January 1992, when Marta Aracely Guerrero de Paredes, Mr. Guerrero's daughter, said that on the day he died her father had been carrying documents revealing the identity of those who had killed the six Jesuit priests. 557/

Mr. Guerrero had used his political influence to obtain information. A few days before he died, at least one friend warned him that his life was in danger and that he should stop investigating the Jesuit case.

The attack on Mr. Guerrero certainly did not occur as a result of an attempt to steal his car. The attackers never addressed a word to the occupants of the car, which was, moreover, hit by so many bullets that it could not be used again.

The role which the Cherokee-type vehicle played in the incident casts further doubts on the identity of those responsible for planning the assassination. Generally speaking, Cherokee vehicles were used in official circles and, similarly, M-16 rifles were used by members of the armed forces and bodyguards. The whereabouts of the Cherokee and its occupants is unknown.

FINDINGS

Taking into account its consideration of the available documents and the direct testimony received, including the new evidence, the Commission finds that there is full evidence that Mr. Guerrero's death resulted not from an attempt to steal his car but from an intention to kill the driver of the car, i.e. Mr. Guerrero.

Mr. Guerrero died as a result of deliberate action aimed at killing him. Although César Ernesto Erazo Cruz was acquitted at the trial, there is every evidence that he participated in the assassination. The Commission tried unsuccessfully to obtain significant information both within and outside El Salvador to confirm or disprove its investigating hypotheses. Although there is sufficient evidence that Erazo Cruz was at the time an active FMLN member, a fact which suggests that a more thorough investigation of FMLN responsibility for the assassination is called for, the available evidence did not allow the Commission, on completion of its work, to reach full agreement on this case.

(g) UNITED STATES SOLDIERS WHO SURVIVED THE SHOOTING DOWN OF A HELICOPTER

SUMMARY OF THE CASE

On 2 January 1991, a United States helicopter gunship was shot down by an FMLN patrol in San Francisco canton, Lolotique district, Department of San Miguel, while flying at low altitude towards its base at Soto Cano, Honduras.

The pilot, Daniel F. Scott, was killed and in the crash and Lt. Colonel David H. Pickett and Corporal Earnest G. Dawson were wounded; all were United States nationals. Members of the patrol approached the helicopter and fired at the survivors from a certain distance. The patrol left the dead United States soldier and the two wounded soldiers at the scene and departed, carrying off weapons and equipment from the helicopter. Shortly afterwards, a member of the patrol was sent back to the scene and killed the two wounded men.

DESCRIPTION OF THE FACTS

At about 1.40 p.m. on 2 January 1991, a United States armed forces UH-1H helicopter took off from the Ilopango airport, San Salvador, with a crew consisting of the following United States military personnel: Lt. Colonel David H. Pickett, Corporal Earnest G. Dawson and the pilot, Daniel F. Scott. Pickett was Commander of the Fourth Battalion of the 22nd Airborne Regiment, based in Soto Cano, Honduras, where they expected to arrive shortly after 5 p.m.

At about 2 p.m., the helicopter was flying over San Francisco canton at an altitude of between 30 and 50 metres. It was flying low in order to be less vulnerable to possible guerrilla missile attacks, and also because, if it was shot down, there would be more likelihood of the occupants surviving.

That day, seven armed combatants of the Ejército Revolucionario del Pueblo (ERP) an FMLN member organization, were on patrol in San Francisco canton, Lolotique district, Department of San Miguel. Severiano Fuentes Fuentes, "Aparicio", a political leader of that organization in the area, was in command of the patrol, which in addition consisted of Antonio Bonilla Rivas, "Ulises", Daniel Alvarado Guevara, "Macaco", Digna Chicas, "Doris", and María Lita Fernández, "Carmen". They were accompanied by Santos Guevara Portillo, "Domínguez", and Fernán Fernández Arévalo, "Porfirio".

On sighting the helicopter, the patrol fired their M-16 and AK-47 rifles at it. The helicopter crashed some 500 metres away.

As the autopsy subsequently showed, the pilot, Scott, was killed when the helicopter crashed. The ERP patrol approached firing and wounded the two survivors.

One member of the patrol went to San Francisco canton, some 500 metres away, and came back with about 10 of the inhabitants. They placed the two wounded men and Scott's body some metres away from the helicopter and took back to San Francisco the articles which the combatants pointed out to them. The latter then set fire to the helicopter.

There is sufficient proof that Severiano Fuentes Fuentes, "Aparicio", ordered Daniel Alvarado Guevara, "Macaco", to kill the two wounded men and that "Macaco" refused to obey. When the patrol had moved about 100 metres away, Fernán Fernández Arévalo, "Porfirio", on the orders of Fuentes, came back and killed the wounded men.

Subsequent events

Some inhabitants of San Francisco told the authorities what had happened. The same night, the bodies were found and transferred by helicopter to Third Brigade headquarters, where they were examined by a justice of the peace. They were subsequently transferred to Ilopango airport, in San Salvador, where they were handed over to the United States authorities.

The following day, 3 January, a group of United States military personnel, accompanied by Salvadorian officers, inspected the remains of the helicopter and interviewed a number of local inhabitants.

The news of the shooting down of the helicopter and the execution of the wounded soldiers was disseminated the same day.

FMLN, via Radio Venceremos, began by denying that any wounded men had been executed. On 7 January, it acknowledged that this might have happened and announced that an investigation would be undertaken. On 9 January, it admitted that the wounded men had been executed and on 18 January it announced that "Domínguez" and "Porfirio" would be tried for the offence. A correction was subsequently issued to the effect that "Aparicio" and not "Domínguez" was involved.

On 17 March 1992, Fuentes ("Aparicio") and Fernández ("Porfirio") voluntarily appeared before the Cinameca Court of First Instance and were sent to the Mariona Prison, where they remain.

Action by the Commission

The Commission on the Truth examined the materials in the judicial dossier, the results of the investigations carried out by United States experts and the documentation relating to the investigation made by FMLN, which was supplied by the latter. It interviewed five of the seven combatants who participated in the incident, together with a number of inhabitants of San Francisco canton and other people who could provide relevant information.

FINDINGS

The Commission considers that there is sufficient proof that United States soldiers Lt. Colonel David H. Pickett and Corporal Earnest G. Dawson, who survived the shooting down of the helicopter by an ERP unit, but were wounded and defenceless, were executed, in violation of international humanitarian law, by Fernán Fernández Arévalo, acting on the orders of Severiano Fuentes Fuentes. The Commission has found no evidence that other members of the unit participated in the execution.

The Commission has likewise found no evidence that the executions were ordered by higher levels of command, or that they were carried out in accordance with an ERP or FMLN policy of killing prisoners. FMLN acknowledged the criminal nature of the incident and detained and tried the accused.

3. ABDUCTIONS

DUARTE AND VILLEDA

On 10 September 1985, Inés Guadalupe Duarte Durán, daughter of President José Napoleón Duarte, and her friend, Ana Cecilia Villeda, arrived by car at the gates of a private university in San Salvador. They were followed in a van by two bodyguards assigned to protect them. As the two vehicles came to a stop, other vehicles positioned themselves so as to block traffic, while a

number of armed individuals killed the bodyguards and forced the two women into a truck. 558/ The two women were taken to a guerrilla camp.

Four days after the incident, the self-styled Pedro Pablo Castillo commando of FMLN publicly announced that it was responsible.

On 24 October, after several weeks of negotiations in which the Salvadorian church and diplomats from the region acted as mediators in secret talks, Inés Duarte and her friend were released in exchange for 22 political prisoners. 559/ The operation also included the release of 25 mayors and local officials abducted by FMLN in exchange for 101 war-wounded guerrillas, whom the Government allowed to leave the country. The entire process of exchanging prisoners, which took place in various parts of the country, was carried out through the International Committee of the Red Cross.

In a communiqué from the FMLN General Command broadcast by Radio Venceremos on the day Inés Duarte was released, the General Command assumed full responsibility for the operation and described the actions of the commando, including the killing of the bodyguards, as "impeccable".

The abduction of Inés Duarte and Ana Cecilia Villeda constitutes a taking of hostages and is therefore a violation of international humanitarian law. 560/

F. MURDERS OF JUDGES

In the 1980s, it was dangerous to be a judge in El Salvador. As can be seen from the reports in this chapter concerning the murders of Monsignor Romero and the Dutch journalists, some judges, after being threatened or attacked, were forced to resign and even to flee the country.

What is more, according to a report given to the Commission on the Truth by the Supreme Court of Justice, 28 judges were murdered in El Salvador in the 1980s. 561/

One of them, Mr. Francisco José Guerrero, was assassinated after completing his term of office as President of the Supreme Court. Three others murdered were judges of courts of first instance and the remaining 24 were justices of the peace; of the latter, 20 were murdered during the period 1980-1982.

The Commission received complaints and testimony from independent sources regarding some of the cases referred to it by the Supreme Court and was able to investigate two of them. As to the other murders, there was evidence that some had been perpetrated by FMLN and others by the death squads and in two cases the judges appear to have died in combat.

The case investigated in depth was the assassination of Mr. Francisco José Guerrero, the report of which is contained in this chapter. The results of the investigation of the murder of a justice of the peace are given below.

JUSTICE OF THE PEACE OF CAROLINA

José Apolinar Martínez, justice of the peace of the town of Carolina in the Department of San Miguel, was shot to death at his home on 14 June 1988. His three-year-old daughter was also wounded in the attack and subsequently underwent weeks of medical treatment.

There is strong evidence that FMLN was responsible. About one year previously, the judge had received threatening letters from the Ejército Revolucionario del Pueblo, one of the armed groups in FMLN. The murder took place in an area at least partially controlled by FMLN. The killers subsequently fled towards an area under greater FMLN control. They were wearing military uniforms and carrying rifles. A piece of paper indicating that FMLN assumed responsibility for the murder was found at the scene of the crime.

On the other hand, a long time elapsed between the threats and the murder. Furthermore, there was no pattern of executing justices of the peace at that time. Although many justices of the peace were murdered in the period 1980-1982, only two such murders, including this one, occurred between 1986 and 1988.

Nevertheless, taking into account all the circumstances and all the evidence, the Commission finds that there is sufficient evidence to attribute this murder to FMLN members. The murder of justice of the peace José Apolinar Martínez violated international humanitarian law.

V. RECOMMENDATIONS

INTRODUCTION

As part of its mandate, the Commission is called upon to make recommendations. Indeed, under the terms of its mandate,

> "The mandate of the Commission shall include recommending the legal, political or administrative measures which can be inferred from the results of the investigation. Such recommendations may include measures to prevent the repetition of such acts, and initiatives to promote national reconciliation".

The Commission decided to first comment generally on the results of its investigations, the principles on which these investigations and its recommendations are based and the persons and institutions to whom they are addressed, before making specific recommendations.

1. General conclusions

The causes and conditions which generated the large number of serious acts of violence in El Salvador derive from very complex circumstances. The country's history and its deeply rooted relations of injustice cannot be attributed simply to one sector of the population or one group of persons. This or that Government institution, certain historical traditions, even the ideological struggle between East and West which went on until only recently, and of which El Salvador was a victim and an episode, are mere components. All these factors help to explain the complex situation in El Salvador during the 12-year period which concerns us. The Commission was not called upon to deal with all these factors, nor could it do so. Instead, it focused on certain considerations which prompted it to formulate its basic recommendations in such a way that this situation might be fully understood.

The lack of human rights guarantees in El Salvador and the fact that a society has operated outside the principles of a State subject to the rule of law imposes a serious responsibility on the Salvadorian State itself, rather than on one or other of its Governments. The political, legislative and institutional mechanisms required to ensure the existence of a society subject to the rule of law existed in theory, at least in part, but the reality was not what it should have been, perhaps as a consequence of excessive pragmatism. With the passage of time, the military establishment and, more specifically, some elements within the armed forces, having embarked upon a course from which they found it difficult to extricate themselves, ended up totally controlling the civilian authorities, frequently in collusion with some influential civilians.

None of the three branches of Government - judicial, legislative or executive - was capable of restraining the military's overwhelming control of society. The judiciary was weakened as it fell victim to intimidation and the foundations were laid for its corruption; since it had never enjoyed genuine institutional independence from the legislative and executive branches, its ineffectiveness steadily increased until it became, through its inaction or its appalling submissiveness, a factor which contributed to the tragedy suffered by

the country. The various, frequently opportunistic, alliances which political leaders (legislators as well as members of the executive branch) forged with the military establishment and with members of the judiciary had the effect of further weakening civilian control over the military, police and security forces, all of which formed part of the military establishment.

The wide network of illegal armed groups, known as "death squads", which operated both within and outside the institutional framework with complete impunity, spread terror throughout Salvadorian society. They originated basically as a civilian operation, designed, financed and controlled by civilians. The core of serving officers, whose role was originally limited to that of mere executants and executioners, gradually seized control of the death squads for personal gain or to promote certain ideological or political objectives. Thus, within the military establishment and in contradiction with its real purpose and mandate, impunity vis-à-vis the civilian authorities became the rule. The institution as a whole was a hostage to specific groups of officers, which were sometimes formed even as their members graduated from officer training school, abused their power and their relations with certain civilian circles and intimidated fellow officers who were reluctant to join in or to collaborate with their corrupt and illegal practices.

The internal armed conflict between opposing forces grew in intensity and magnitude. The inevitable outcome was acts of violence, some of which were brought before the Commission with anxiety and anticipation. The more bloody the conflict became, and the more widespread, the greater the power of the military hierarchy and of those who commanded armed insurgent groups. The outcome of that vicious circle was a situation in which certain elements of society found themselves immune from any governmental or political restraints and thus forged for themselves the most abject impunity. It was they who wielded the real power of the State, expressed in the most primitive terms, while the executive, legislative and judicial branches were unable to play any real role as branches of government. The sad fact is that they were transformed, in practice, into mere façades with marginal governmental authority.

How else can the modus operandi of the death squads be understood? The disappearance of large numbers of people, the assassination attempts on important Government officials, church leaders and judges, and the fact that the perpetrators of these atrocities were only rarely brought to trial. What is ironic is that the web of corruption, timidity and weakness within the judiciary and its investigative bodies greatly impeded the effective functioning of the judicial system even where crimes attributed to FMLN were involved.

In order to avoid any risk of reverting to the status quo ante, it is essential that El Salvador establish and strengthen the proper balance of power among the executive, legislative and judicial branches and that it institute full and indisputable civilian control over all military, paramilitary, intelligence and security forces. The recommendations which follow are intended to outline the basic prerequisites for this transition and to ensure that it leads to a democratic society in which the rule of law prevails and human rights are fully respected and guaranteed.

2. Principles

The report which the Commission is submitting is part of a process initiated, according to the Geneva Agreement of 4 April 1990, for the purpose of ending the armed conflict by political means as speedily as possible, promoting the democratization of the country, guaranteeing unrestricted respect for human rights and reunifying Salvadorian society. The first of these objectives has already been achieved. The remaining goals, however, require a continuous and, in some respects, permanent effort. These goals are complementary: democracy loses ground when human rights are not fully respected; human rights cannot be protected from arbitrariness without the rule of law which is the expression of the democratic system of government; and unless rights and freedoms are respected and guaranteed for all, it will be difficult to speak of a reunified society.

The Commission's recommendations, while they bear fully on the results of its investigations, provide the means for pursuing these objectives, which were defined in the context of the country's recent history by the Salvadorians who negotiated the peace agreements, and by the decisive majority which supported them, as the objectives which must be achieved in the society which they are now beginning to build. Accordingly, these recommendations are based on the following principles:

One: Democracy, which leaves the fundamental decisions as to the destiny of society in the hands of the people, and which gives priority to dialogue and negotiation as basic political tools.

Two: Participation, which integrates minorities with the majority and gives pride of place to democracy as a model respectful of the individual and collective dimensions of human coexistence; also, a participation which promotes solidarity and respect among individuals.

Three: The rule of law, in which the primacy of and respect for the law is the basis of a culture which guarantees equality and proscribes all arbitrariness.

Four: Respect for human rights, which are the raison d'être of the above principles and the basis of a society organized to serve people, all of whom are vested with equal freedom and dignity.

The consolidation of the supremacy of civilian authority in Salvadorian society and the necessary subordination of the armed forces to it stem directly from the democratic concept of the rule of law, the primordial value of the dignity of the human person and, hence, full respect for his rights.

The peace agreements envisage a new concept of national defence and public security which represents significant progress towards establishing the supremacy of civilian authority. It is essential that all, absolutely all, the agreements on these issues be complied with fully.

The Commission also underscores the special care which must be taken in implementing the provisions of the peace agreements, and the recommendations in this report, for strengthening a comprehensive system for the protection of

human rights and an independent, strong and effective judiciary. The glaring deficiencies experienced by the country in this regard were a prime cause of the occurrence and systematic repetition of extremely grave human rights violations, and such violations will be deemed to have been completely eradicated only when this objective is achieved.

3. Persons and institutions to whom the recommendations are addressed

The Commission's mandate does not specify or limit the persons or institutions to whom its recommendations are to be addressed. What it does establish is a procedure as regards the undertaking given by the Parties, namely, the Government and FMLN, concerning these recommendations. In signing the Mexico Agreements, the Parties created the mechanism which is now completing its work. They undertook to carry out the Commission's recommendations (agreement on the Commission on the Truth, para. 10) and must therefore implement, without delay, those recommendations which are addressed directly to them. Where the recommendations are addressed to others or, particularly in the case of the Government, where they require action or initiatives by State organs other than the executive branch, the Government's undertaking means that it must take the necessary action and initiatives to ensure that the recommendations are put into practice by the appropriate State machinery.

It should also be noted that, with the armed conflict at an end, it is natural that the bulk of the recommendations, being institutional in nature, should be addressed to the official sector. The most crucial recommendation which would have had to be made to FMLN would have been to abandon the use of arms as a means of political struggle and, in any case, to renounce acts and practices such as those described in this report. This objective has been achieved through the peace agreements and their implementation, although this does not prevent the Commission from making a strong appeal to FMLN to ensure that its action as a political force is always accompanied by militant renunciation of all forms of violent struggle and constant adherence to the legal and civilized means proper to democracy, renouncing for ever the methods which resulted in the serious acts of violence described herein that were committed under its authority.

The Commission will now make its recommendations. Clearly, not all of them have the same importance or the same meaning. Some of them, which are inferred directly from the results of the investigation and must be acted on urgently, are aimed at the immediate removal of factors relating directly to the acts investigated or to the fact that the latter were not cleared up when they should have been. Another group of recommendations seeks to remedy certain structural defects linked directly to the acts examined by the Commission. A third group concerns institutional reforms designed to prevent the repetition of such acts. Lastly, the Commission will present its considerations and recommendations concerning national reconciliation.

I. RECOMMENDATIONS INFERRED DIRECTLY FROM THE RESULTS OF THE INVESTIGATION

In this section, the Commission will make recommendations which are the direct and inevitable consequence of its findings concerning acts which it has been called upon to investigate and clarify, in the light of realities connected directly with them which still pervade the country. By their nature, these recommendations are the ones which must be carried out most urgently.

The Commission makes the following recommendations which must be carried out without delay:

A. DISMISSAL FROM THE ARMED FORCES

The findings on the cases investigated by the Commission on the Truth and published in this report give the names of officers of the Salvadorian armed forces who are personally implicated in the perpetration or cover-up of serious acts of violence, or who did not fulfil their professional obligation to initiate or cooperate in the investigation and punishment of such acts. For those officers who are still serving in the armed forces, the Commission recommends that they be dismissed from their posts and discharged from the armed forces. For those now in retirement or discharged, the Commission recommends application of the measure described in paragraph C below.

B. DISMISSAL FROM THE CIVIL SERVICE

The findings on the cases investigated by the Commission on the Truth also give the names of civilian officials in the civil service and the judiciary. These officials, acting in their professional capacity, covered up serious acts of violence or failed to discharge their responsibilities in the investigation of such acts. For these persons, the Commission recommends that they be dismissed from the civil service or judicial posts they currently occupy. For those who no longer occupy such posts, the Commission recommends application of the measure described in paragraph C below.

C. DISQUALIFICATION FROM HOLDING PUBLIC OFFICE

Under no circumstances would it be advisable to allow persons who committed acts of violence such as those which the Commission has investigated to participate in the running of the State. The Commission therefore believes that the persons referred to in the preceding paragraphs, as well as any others equally implicated in the perpetration of the acts of violence described in this report, including the civilians and members of the FMLN Command named in the findings on individual cases, should be disqualified from holding any public post or office for a period of not less than 10 years, and should be disqualified permanently from any activity related to public security or national defence. While the Commission does not have the power to apply such a provision directly, it does have the power to recommend to the National Commission for the Consolidation of Peace (COPAZ) that it prepare a preliminary legislative draft on this issue, offering proper guarantees in accordance with Salvadorian law, and that it submit such draft to the Legislative Assembly for early approval. It also has the power to recommend to the bodies authorized to make appointments to public office that they refrain from appointing the persons referred to above.

D. JUDICIAL REFORM

All aspects of the agreed judicial reform must be put into practice. Even if this reform must be complemented by additional measures, some of which will be the subject of other recommendations by the Commission, the agreements reached on this issue during the peace process must be complied with immediately and in full. Two specific aspects should be noted:

(a) REFORM OF THE SUPREME COURT OF JUSTICE

The constitutional reform approved as part of the peace process provided a new procedure for the election of judges to the Supreme Court of Justice, the body which heads the judicial branch. Those innovations cannot be put into effect until the current judges' terms expire, with the result that the Court continues to consist of persons elected in accordance with the rules that applied before the constitutional reform and the peace agreements. Given the tremendous responsibility which the judiciary bears for the impunity with which serious acts of violence such as those described in this report occurred, there is no justification for further postponing the appointment of a new Supreme Court of Justice, whose current members should make way for the immediate implementation of the constitutional reform by resigning from their posts.

(b) NATIONAL COUNCIL OF THE JUDICIARY

The peace agreements provided for the establishment of a National Council of the Judiciary independent from the organs of State and from political parties (Mexico Agreements: "Political agreements elaborating on the constitutional reform", A (b) (1); Chapultepec Peace Agreement, chap. III (1) (A)). However, the National Council of the Judiciary Act, adopted in December 1992 by the Legislative Assembly, contains provisions which, in practice, leave the dismissal of some members of that Council to the discretion of the Supreme Court of Justice. The Commission recommends that this system be changed and that it be possible to dismiss members of the Council only for precise legal causes, to be weighed by the Legislative Assembly which, being the body constitutionally authorized to appoint such members, should, logically, also be the one to decide on their dismissal.

E. JUDGES

The Career Judicial Service Act, the amendment of which, the Commission understands, is under discussion for the date on which this report will be submitted, should establish that only those judges who, according to a rigorous evaluation made by the National Council of the Judiciary, have demonstrated judicial aptitude, efficiency and concern for human rights and offer every guarantee of independence, judicial discretion, honesty and impartiality in their actions may remain in the career judicial service.

F. PENALTIES

One of the direct consequences of the clarification of the serious acts which the Commission has investigated should, under normal circumstances, be the punishment which those responsible for such acts deserve. However, in view of current conditions in the country and the situation of the administration of

justice, the Commission is facing insurmountable difficulties which it will describe below.

It is not within the Commission's powers to directly impose penalties on those responsible: it does not have judicial functions and cannot therefore decide to impose a particular penalty on a person. That is a function which, by its nature, properly belongs to the courts, a question which raises serious problems for the Commission. Accordingly, the problem and possible solutions to it cannot be discussed in isolation from the current situation in the country.

One painfully clear aspect of that situation is the glaring inability of the judicial system either to investigate crimes or to enforce the law, especially when it comes to crimes committed with the direct or indirect support of State institutions. It was because these shortcomings were so apparent that the Government and FMLN agreed to create an instrument such as the Commission on the Truth to perform tasks which should normally be undertaken by the bodies responsible for the administration of justice. Had the judiciary functioned satisfactorily, not only would the acts which the Commission has had to investigate have been cleared up at the proper time, but the corresponding penalties would have been imposed. The inability of the courts to apply the law to acts of violence committed under the direct or indirect cover of the public authorities is part and parcel of the situation in which those acts took place and is inseparable from them. This is a conclusion which emerges clearly from most of the cases of this kind examined in this report.

We must ask ourselves, therefore, whether the judiciary is capable, all things being equal, of fulfilling the requirements of justice. If we take a detached view of the situation, this question cannot be answered in the affirmative. The structure of the judiciary is still substantially the same as it was when the acts described in this report took place. The reforms of the judicial system agreed on during the peace process have been implemented to only a limited extent, so that they have yet to have a significant impact which translates into a transformation of the administration of justice. What is more, the judiciary is still run by people whose omissions were part of the situation which must now be overcome, and there is nothing to indicate that their customary practices will change in the near future.

These considerations confront the Commission with a serious dilemma. The question is not whether the guilty should be punished, but whether justice can be done. Public morality demands that those responsible for the crimes described here be punished. However, El Salvador has no system for the administration of justice which meets the minimum requirements of objectivity and impartiality so that justice can be rendered reliably. This is a part of the country's current reality and overcoming it urgently should be a primary objective for Salvadorian society.

The Commission does not believe that a reliable solution can be found to the problems it has examined by tackling them in the context which is primarily responsible for them. The situation described in this report would not have occurred if the judicial system had functioned properly. Clearly, that system has still not changed enough to foster a feeling of justice which could promote national reconciliation. On the contrary, a judicial debate in the current context, far from satisfying a legitimate desire for justice, could revive old

frustrations, thereby impeding the achievement of that cardinal objective, reconciliation. That being the current situation, it is clear that, for now, the only judicial system which the Commission could trust to administer justice in a full and timely manner would be one which had been restructured in the light of the peace agreements.

II. ERADICATION OF STRUCTURAL CAUSES LINKED DIRECTLY TO THE ACTS EXAMINED

The peace process led to a set of political agreements which are clearly supported by society as a whole and which introduce major structural reforms and address many defects which contributed to the situation described in this report. As a general principle, the Commission recommends most emphatically that all the agreements be implemented in full: that was the undertaking made by those who negotiated and concluded the agreements and it is also what the Salvadorian people expects, believes in and hopes for.

Without prejudice to these general comments, the Commission wishes to make some additional recommendations:

A. Reforms in the armed forces

1. The transition to the new model of the armed forces outlined in the peace agreements and in the constitutional reform should be made rapidly and transparently, under the close supervision of the civilian authorities. It is recommended that a special committee of the Legislative Assembly be appointed for that purpose, comprising the various political forces represented in the Assembly. Special attention should be paid to the subordination of the military establishment to the civilian authorities, democratic control over promotions to senior ranks and positions of command, rigorous budgetary management, greater decentralization of the military structure, application of the new doctrine and new educational system of the armed forces and steady professionalization of officers.

2. The comprehensive review of the military legislation in force should be completed without delay, in order to bring it fully into line with the new Political Constitution, the new doctrine of the armed forces and the requirements of respect for human rights.

3. Among the reforms referred to in the preceding paragraph, a simple and practical mechanism must be established to resolve the situation of subordinates who receive illegal orders, so that they are protected if they refuse to obey. The provision of article 173 of army regulations which requires a subordinate to obey, at all times and irrespective of risk, the orders he receives from a superior, should be repealed, and the pledge so to obey should be eliminated from the formula used when swearing the solemn oath of allegiance to the flag as part of military ceremonial. It must be made clear, in any case, that so-called "due obedience" does not exonerate a person who carries out an order which is clearly illegal.

4. The above-mentioned reforms should also provide that all actions whereby members of the armed forces take advantage of their status to commit abuses of power or violations of human rights are to be regarded as serious offences against the military institution, and should stipulate the

administrative and legal penalties to which the perpetrators are liable, including discharge, without prejudice to the imposition of the corresponding criminal penalties, where appropriate. A strict system of discharges should not allow persons who have been discharged for the type of conduct described, or for other reasons which adversely affect the service or the institution, to be readmitted to the institution.

5. Military curricula, from the Military College to General Staff courses, should include thorough training in human rights. The assistance of a highly qualified civilian teaching staff will be required for this.

6. In selecting advanced training courses for officers of the armed forces to follow abroad, care will have to be taken to ensure that such courses are based on a doctrine of democracy and respect for human rights.

7. The armed forces Court of Honour created by the peace agreements should give priority to the eradication of any vestige of a relationship between serving and retired members of the armed forces and now-disbanded paramilitary bodies or any illegal armed group.

B. Reforms in the area of public security

One of the prominent features of the peace agreements was the decision to disband the former public security forces (CUSEP), which were organically linked to the armed forces, and to entrust civilian security to the National Civil Police, a new and absolutely civilian entity. The Commission recommends most emphatically that the guidelines for the new body be scrupulously observed. The demilitarization of the police is a big step forward in El Salvador and it must be ensured that there are no links between the National Civil Police and the former security forces or any other branch of the armed forces.

C. Investigation of illegal groups

One of the most horrendous sources of the violence which swept the country in recent years was the activity of private armed groups which operated with complete impunity. All necessary measures must be taken to ensure that they are disbanded. Given the country's history, prevention is essential in this area. There is always a risk that such groups may become active again. The Commission recommends that a thorough investigation of this issue be undertaken immediately and that, since the newly established National Civil Police is still in its early stages, assistance be sought, through channels which the confidentiality of the issue requires, from the police of friendly countries which are in a position to offer it.

III. INSTITUTIONAL REFORMS TO PREVENT THE REPETITION OF SUCH ACTS

This too is an issue which is intrinsically linked to the implementation of the reforms agreed to in all the peace agreements, which are designed to provide the country with a modern, democratic institutional framework adapted to the requirements of the rule of law.

The Commission believes, however, that there are some points which should be emphasized, either because of their importance or because they were not clearly resolved in the peace agreements.

A. Administration of justice

One of the most pressing requirements if democracy in El Salvador is to be consolidated into the genuine rule of law is the transformation of its judicial system. The judicial reform programmes currently being worked out should be intensified and put into practice as soon as possible. The effort which the Ministry of Justice is making to link judicial reform to the democratization process is highly commendable and should be carried to its conclusion.

There are also some issues which are important enough to warrant a separate comment by the Commission:

1. One of the most glaring deficiencies which must be overcome in the Salvadorian judicial system is the tremendous concentration of functions in the Supreme Court of Justice, and in its President in particular, as the body which heads the judiciary. This concentration of functions seriously undermines the independence of lower court judges and lawyers, to the detriment of the system as a whole. The formal origin of this problem is constitutional, with the result that solving it requires analysing whether the relevant provisions should be amended, through the procedure provided for in the Constitution itself, so that the Court, without losing its status as the country's highest court, is not also the administrative head of the judiciary.

2. Judges should not be appointed and removed by the Supreme Court of Justice, but by an independent National Council of the Judiciary.

3. Each judge should be responsible for administering the resources of the court under his jurisdiction and should be accountable for them to the National Council of the Judiciary.

4. The functions of granting authorization to practise as a lawyer or notary and suspending or penalizing members of those professions should be attributed to a special independent body and not to the Supreme Court of Justice.

5. The budget allocation for the administration of justice provided for in the Constitution should be used to create new courts and improve judges' salaries.

6. The Commission recommends the adoption of the following measures to reinforce the application of the right to due process:

   (a) Invalidate extrajudicial confessions.

   (b) Ensure that accused persons, in all circumstances, exercise their right to be presumed innocent.

(c) Ensure strict compliance with the maximum time-limits for police and judicial detention, establishing immediate penalties for violators.

(d) Reinforce exercise of the right to defence starting from the very first actions in a proceeding.

7. The utmost priority should be given to the proper functioning of the Judicial Training School, conceived as a study centre not only for professional training but also to establish bonds of solidarity among judges and a coherent overall vision of the function of the judiciary in the State - to quote the peace agreements. There is also a short term need to train new, sound human resources to staff new courts or to replace members of the judiciary who, according to the evaluation which the Commission has recommended, should not remain in the judiciary. This is an area susceptible to constructive, tangible international cooperation. The Commission calls on those in a position to offer such assistance to do so without delay, as part of an accelerated programme of implementation, and even ventures to appeal first and foremost to the European Economic Community, because of the similarities between the Salvadorian legal system and that of several of its member countries.

B. Protection of human rights

Many agreements were reached on this issue during the peace negotiations, including constitutional and legal reforms and the deployment of a United Nations human rights verification mission, something unprecedented in the history of the Organization. The Commission's first recommendation is that these agreements should be complied with strictly and that ONUSAL recommendations on human rights should be implemented.

In addition to all the proposals advanced in this area as part of the peace process, the Commission would like to make the following recommendations, fully realizing that some of them can be implemented only through a constitutional reform:

1. The Office of the National Counsel for the Defence of Human Rights must be strengthened:

(a) It would be desirable if the Counsel, with the support of ONUSAL and the participation of all governmental and non-governmental sectors concerned, made an assessment of the Office's current situation and its most immediate priorities and needs, in order to secure the means, including international cooperation, to achieve those objectives.

(b) The Office's presence should be extended throughout the country through offices in the various departments.

(c) The Office should make more frequent use of its powers to inspect any site or installation in the country, especially where places of detention are concerned.

2. Measures must be taken to make the remedies of amparo and habeas corpus truly effective. To that end, the Commission recommends the following:

   (a) Competence to hear these remedies should be broadened in order to make them more accessible to the population. All judges of first instance should be competent, within their sphere of jurisdiction, to hear remedies of amparo or habeas corpus, and this competence could be extended to justices of the peace. The Supreme Court of Justice should only be the final instance in such proceedings.

   (b) Express provision should be made that the remedies of amparo and habeas corpus, like the rules of due process, cannot be suspended under any circumstances, including during a state of emergency.

3. The constitutional force of human rights provisions should be reaffirmed, including those not set forth expressly in the Constitution but in other instruments such as human rights conventions binding on El Salvador.

4. The system of administrative detention also warrants a number of changes. This is a matter of prime importance, since violations of integrity of person and even disappearances can occur during such detention:

   (a) The restrictions as to which officials can order administrative detention, which officials can carry it out and for what reasons should be spelled out.

   (b) The duration of administrative detention should be kept to the absolute minimum.

   (c) The administrative authorities should be stripped of their power to impose penalties involving deprivation of liberty. Such penalties should be imposed only by the law courts, in the context of due process.

5. It is recommended that the current system of information on detainees should be expanded. Through the Office of the National Counsel for the Defence of Human Rights, a centralized, up-to-date list should be kept of all persons detained for any reason, indicating their location and legal status. The competent authorities must inform the Office of any detention that is carried out and the personnel involved in the arrest.

6. Any future reform of criminal legislation should give due consideration to crimes committed with the direct or indirect support of the State apparatus, either by establishing new categories of crimes, modifying existing ones or introducing special aggravating circumstances.

7. Legislation should be passed granting a simple, swift and accessible remedy to anyone who has been a victim of a human rights violation enabling them to obtain material compensation for the harm suffered.

8. Certain decisions should also be taken at the international level to reinforce the country's adherence to global and regional systems for the protection of human rights. To that end, the Commission recommends that El Salvador:

(a) Ratify the following international instruments: Optional Protocol to the International Covenant on Civil and Political Rights, Optional Protocol to the American Convention on Human Rights (Protocol of San Salvador), Conventions Nos. 87 and 98 of the International Labour Organisation, Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Inter-American Convention to Prevent and Punish Torture.

(b) Recognize the compulsory jurisdiction of the Inter-American Court of Human Rights established by the American Convention on Human Rights, as all the other Central American Republics have done.

C. National Civil Police

The Commission emphasizes the importance of the establishment and functioning of the National Civil Police, in accordance with the model defined in the peace agreements, for defending the population and preventing human rights violations. In addition to making a general recommendation to this effect, it wishes to emphasize criminal investigation, an issue closely linked to the impunity which accompanied the serious acts of violence described in this report. First, it recommends that every effort be made to put into practice as soon as possible the criminal investigation mechanism decided on in the peace agreements, which entails joint action by the National Civil Police and the Office of the Attorney General of the Republic. This is also an area where international technical and financial cooperation can make a substantial contribution. Second, it recommends that the Commission for the Investigation of Criminal Acts be dissolved: it was through its omissions that serious human rights violations during the period under investigation were covered up.

IV. STEPS TOWARDS NATIONAL RECONCILIATION

The Geneva Agreement of 4 April 1990, which provided the framework for the negotiations and thus for the peace agreements, defined as objectives of the process, in addition to guaranteeing unrestricted respect for human rights and promoting the democratization of the country, the restoration of peace, national reconciliation and the reunification of Salvadorian society. These last two goals are complex and do not depend only on the cessation of hostilities but also on a process involving several stages that cannot be bypassed. We are again faced with inseparable goals. There will be no reunification of Salvadorian society without national reconciliation, and the latter will be impossible without the fraternal unity of the Salvadorian people.

The country must move on from a situation of confrontation to one of calm assimilation of all that has happened, in order banish such occurrences from a future characterized by a new relationship of solidarity, coexistence and tolerance. In order to achieve this, a process of collective reflection on the reality of the past few years is crucial, as is a universal determination to eradicate this experience forever.

One bitter but unavoidable step is to look at and acknowledge what happened and must never happen again. The Commission took on the difficult task of clarifying significant aspects of this reality, which it hopes it has fulfilled through this report. The truth is not enough, however, to achieve the goals of national reconciliation and the reunification of Salvadorian society. Pardon is essential: not a formal pardon which is limited to not imposing penalties, but one founded on a universal determination to rectify the mistakes of the past and on the certainty that this process will not be complete unless it emphasizes the future rather than a past which, no matter how abhorrent the acts which occurred, cannot now be altered.

However, in order to achieve the goal of a pardon, we must pause and weigh certain consequences which can be inferred from knowledge of the truth about the serious acts described in this report. One such consequence, perhaps the most difficult to address in the country's current situation, is that of fulfilling the twofold requirements of justice: punishing the guilty and adequately compensating the victims and their families.

The Commission has already referred in its introduction to this chapter of the report to the insurmountable difficulties it has encountered in this regard. Such difficulties, which it is beyond its power to resolve directly, can be attributed to the glaring deficiencies of the judicial system.

In this connection, the Commission would simply add that, since it is not possible to guarantee a proper trial for all those responsible for the crimes described here, it is unfair to keep some of them in prison while others who planned the crimes or also took part in them remain at liberty. It is not within the Commission's power to address this situation, which can only be resolved through a pardon after justice has been served.

However, the Commission fervently hopes that knowledge of the truth, and the immediate implementation of the above recommendations which can be inferred directly from the investigation, will be an adequate starting-point for national reconciliation and for the desired reunification of Salvadorian society.

But justice does not stop at punishment; it also demands reparation. The victims and, in most cases, their families, are entitled to moral and material compensation. FMLN must provide such compensation where it is found to have been responsible, while this obligation devolves on the State in cases where the actions or omissions of the public authorities or their agencies were among the causes of the acts of violence described, or in cases where the persons responsible enjoyed impunity. However, since the country's financial constraints and national reconstruction needs cannot be ignored complementary mechanisms along the lines recommended below should be envisaged.

A. Material compensation

1. It is recommended that a special fund be established, as an autonomous body with the necessary legal and administrative powers, to award appropriate material compensation to the victims of violence in the shortest time possible. The fund should take into account the information on the victims reported to the Commission on the Truth contained in the annexes to this report.

2. The fund should receive an appropriate contribution from the State but, in view of prevailing economic conditions, should receive a substantial contribution from the international community. Therefore, without prejudice to the obligations of the State and of FMLN, the Commission urgently appeals to the international community, especially the wealthier countries and those that showed most interest in the conflict and its settlement, to establish a fund for that purpose. It also suggests that the United Nations Secretariat promote and coordinate this initiative. It further recommends that not less than 1 per cent of all international assistance that reaches El Salvador be set aside for this purpose.

3. The fund could be managed by a board of directors consisting of three members: one appointed by the Government of El Salvador, one appointed by the Secretary-General of the United Nations and a third chosen by mutual agreement between the two appointed members.

4. The fund must be free to establish its own rules of procedure and to act in accordance with the Commission's recommendations, Salvadorian law, international law and general legal principles.

B. Moral compensation

The Commission recommends:

1. The construction of a national monument in El Salvador bearing the names of all the victims of the conflict.

2. Recognition of the good name of the victims and of the serious crimes of which they were victims.

3. The institution of a national holiday in memory of the victims of the conflict and to serve as a symbol of national reconciliation.

C. Forum for Truth and Reconciliation

The Commission feels it would be useful if this report and its conclusions and recommendations and progress towards national reconciliation were analysed not only by the Salvadorian people as a whole but also by a special forum comprising the most representative sectors of society which, in addition to the above-mentioned

objectives, should strive to monitor strict compliance with the recommendations.

It is not for the Commission to indicate how such a forum should be established. However, a National Commission for the Consolidation of Peace (COPAZ) was established under the peace agreements as "a mechanism for the monitoring of and the participation of civilian society in the process of change resulting from the negotiations". It therefore seems appropriate that the task referred to by the Commission should be entrusted primarily to COPAZ. However, given the scope the importance of the subject-matter dealt with in this report, the Commission would like to suggest to COPAZ that, to this end, it consider expanding its membership so that sectors of civilian society that are not directly represented in COPAZ can participate in this analysis.

Moreover, COPAZ is the body entrusted by the agreements with preparing preliminary legislative drafts related to the peace process. In this sphere, it has a crucial role to play in the implementation of the recommendations in the present report that call for legal reforms.

D. International follow-up

The Commission has carried out its mandate as part of an extraordinary process which is a milestone in the history of United Nations operations for the maintenance of international peace and security. The tragedy in El Salvador absorbed the attention of the international community. As a result, the current peace process continues to arouse expectations throughout the world. The United Nations is also responsible for verifying all the agreements, which includes ensuring that the recommendations of the Commission on the Truth, which the Parties undertook to carry out, are implemented.

The Commission requests the Independent Expert for El Salvador of the United Nations Commission on Human Rights, in the report he is to submit to the Commission on Human Rights pursuant to his mandate and to the extent allowed by that mandate, to make corresponding evaluation of the implementation of the recommendations of the Commission on the Truth.

VI. EPILOGUE: THE SEEKERS AFTER PEACE

Yes indeed, as the Mayan poem goes, all these things happened among us. Each one of us projected his own version of the truth as the universal truth. Each group or party saw its banner as the only banner in the Manicheism that held sway. And every individual or party loyalty was held to be the only real allegiance. In those days, all Salvadorians were so unfair in one way or another to their fellow countrymen that the heroism of some became the immediate misfortune of others. Moreover, the nation was a pawn in the East-West conflict; Salvadorians were buffeted by a turbulent sea of waning ideologies and global contradictions. Although the victims hailed from many countries, they were mainly Salvadorians. One way or another, blame for this can be attributed

to a complex web of events in El Salvador's history and to unique circumstances in world history, so that it would be unfair to assign it to a particular individual, organization or party.

When there came pause for thought, each Salvadorian once again responded to the only true allegiance - allegiance to the nation. The Salvadorian nation looked deep into its soul and saw, as the preamble to the Constitution says, its destiny written in the stars. Many brilliant war-time figures have also shone in peacetime: the old contradictions and intransigence contrast sharply with the current rapprochements and agreements. Former combatants of all parties have embraced one another in a sign of reconciliation. There are neither victors nor vanquished, since every one gains from the agreements. As in classical painting, the loftier sentiments that make law the agreed bulwark against unbridled freedom and mindless anarchy triumph over the pain of battle.

The report of the Commission on the Truth records the acts of violence that occurred repeatedly during the 12 years of war in order to prevent such events from ever happening again.

Pursuant to its mandate under the peace agreements, the Commission is presenting this background to the country's painful recent history as a lesson for reconciliation: this is the motivation behind the recommendations of this report, submitted on 15 March 1993 to the President of El Salvador, Mr. Alfredo Cristiani; to former Commanders of the Frente Farabundo Martí para la Liberación Nacional (FMLN), Schafik Handal, Salvador Samayoa and Ana Gualupe Martínez; and to the Secretary-General of the United Nations, Mr. Boutros Boutros-Ghali.

The collective spirit underlying the agreements also runs through this report, which is the contribution of the Commission on the Truth to restoring the institutional fabric of El Salvador. However, it is for Salvadorians themselves to take the fundamental decisions that will lead to a full-fledged peace. Salvadorian society must decide about accountability for past actions and new statutes of limitations. It has the power to grant pardons. It is also this society, steeped in the painful lessons of war, that will have to settle the dispute about new appointments to high office.

The members of the Commission on the Truth hope - as the only compensation for the pact made with their own consciences - that this report will help the seekers after peace, the protagonists of the new history of El Salvador, to find answers.

VII. INSTRUMENTS ESTABLISHING THE COMMISSION'S MANDATE

The following are the passages pertaining to the Commission on the Truth contained in the peace agreements between the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (FMLN):

Mexico Agreements, 27 April 1991

[...]

IV. COMMISSION ON THE TRUTH

Agreement has been reached to establish a Commission on the Truth, which shall be composed of three individuals appointed by the Secretary-General of the United Nations after consultation with the Parties. The Commission shall elect its Chairman. The Commission shall be entrusted with the task of investigating serious acts of violence that have occurred since 1980 and whose impact on society urgently requires that the public should know the truth. The Commission shall take into account:

(a) The exceptional importance that may be attached to the acts to be investigated, their characteristics and impact, and the social unrest to which they gave rise; and

(b) The need to create confidence in the positive changes which the peace process is promoting and to assist the transition to national reconciliation.

The characteristics, functions and powers of the Commission on the Truth and other related issues are set forth in the corresponding annex.

[...]

Annex to the Mexico Agreements, 27 April 1991

COMMISSION ON THE TRUTH

The Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (hereinafter referred to as "the Parties"),

Reaffirming their intention to contribute to the reconciliation of Salvadorian society;

Recognizing the need to clear up without delay those exceptionally important acts of violence whose characteristics and impact, and the social unrest to which they gave rise, urgently require that the complete truth be made known and that the resolve and means to establish the truth be strengthened;

Considering that, although the need to put an end to impunity was raised in the discussion on the item on the armed forces of the Agenda for the negotiations adopted at Caracas on 21 May 1990, the means of investigation which

the Parties themselves have been prepared to set up are addressing situations whose complexity warrants independent treatment;

Agreeing on the advisability of fulfilling that task through a procedure which is both reliable and expeditious and may yield results in the short term, without prejudice to the obligations incumbent on the Salvadorian courts to solve such cases and impose the appropriate penalties on the culprits;

Have arrived at the following political agreement:

1. There is hereby established a Commission on the Truth (hereinafter referred to as "the Commission"). The Commission shall be composed of three individuals appointed by the Secretary-General of the United Nations after consultation with the Parties. The Commission shall elect its Chairman.

FUNCTIONS

2. The Commission shall have the task of investigating serious acts of violence that have occurred since 1980 and whose impact on society urgently demands that the public should know the truth. The Commission shall take into account:

(a) The exceptional importance that may be attached to the acts to be investigated, their characteristics and impact, and the social unrest to which they gave rise; and

(b) The need to create confidence in the positive changes which the peace process is promoting and to assist the transition to national reconciliation.

3. The mandate of the Commission shall include recommending the legal, political or administrative measures which can be inferred from the results of the investigation. Such recommendations may include measures to prevent the repetition of such acts, and initiatives to promote national reconciliation.

4. The Commission shall endeavour to adopt its decisions unanimously. However, if this is not possible, a vote by the majority of its members shall suffice.

5. The Commission shall not function in the manner of a judicial body.

6. If the Commission believes that any case brought to its attention does not meet the criteria set forth in paragraph 2 of this agreement, it may refer the case to the Attorney-General of the Republic, should it deem appropriate, for handling through the judicial channel.

POWERS

7. The Commission shall have broad powers to organize its work and its functioning. Its activities shall be conducted on a confidential basis.

8. For the purposes of the investigation, the Commission shall have the power to:

(a) Gather, by the means it deems appropriate, any information it considers relevant. The Commission shall be completely free to use whatever sources of information it deems useful and reliable. It shall receive such information within the period of time and in the manner which it determines.

(b) Interview, freely and in private, any individuals, groups or members of organizations or institutions.

(c) Visit any establishment or place freely without giving prior notice.

(d) Carry out any other measures or inquiries which it considers useful to the performance of its mandate, including requesting reports, records or documents from the Parties or any other information from State authorities and departments.

UNDERTAKING BY THE PARTIES

9. The Parties undertake to extend to the Commission whatever cooperation it requests of them in order to gain access to sources of information available to them.

10. The Parties undertake to carry out the Commission's recommendations.

REPORT

11. The Commission shall submit a final report, with its conclusions and recommendations, within a period of six months after its establishment.

12. The Commission shall transmit its report to the Parties and to the Secretary-General of the United Nations, who shall make it public and shall take the decisions or initiatives that he deems appropriate.

13. Once the report has been handed over, the Commission's mandate shall be considered terminated and the Commission shall be dissolved.

14. The provisions of this agreement shall not prevent the normal investigation of any situation or case, whether or not the Commission has investigated it, nor the application of the relevant legal provisions to any act that is contrary to law.

[...]

El Salvador Peace Agreement signed at Chapultepec on 16 January 1992

[...]

3. C. The Commission on the Truth established by the Mexico Agreements of 26 April 1991 (hereinafter referred to as "the Commission on the Truth"), may appoint an observer to the ad hoc Commission.

[...]

5. END TO IMPUNITY

The Parties recognize the need to clarify and put an end to any indication of impunity on the part of officers of the armed forces, particularly in cases where respect for human rights is jeopardized. To that end, the Parties refer this issue to the Commission on the Truth for consideration and resolution. All of this shall be without prejudice to the principle, which the Parties also recognize, that acts of this nature, regardless of the sector to which their perpetrators belong, must be the object of exemplary action by the law courts so that the punishment prescribed by law is meted out to those found responsible.

[...]

VIII. PERSONS WORKING ON THE COMMISSION ON THE TRUTH

I. The Commissioners

Belisario Betancur, Chairman; Reinaldo Figueredo Planchart; Thomas Buergenthal

II. Advisers to the Commissioners

Douglass Cassel; Guillermo Fernández de Soto; Luis Herrera Marcano; Robert E. Norris

III. Executive Director

Patricia Tappatá de Valdez

IV. Consultants and researchers

Carlos Chipoco; Mabel Colalongo; Jayni Edelstein; Stener Ekern; Guillermo Fernández-Maldonado; Alfredo Forti; Lauren Gilbert; Juan Gabriel Gómez; Javier Hernández; Sergio Hevia; Elena Jenny-Williams; Felipe Michelini; Theodore Piccone; Clifford C. Rohde; Carlos Somigliana; Ana María Tello; Lucía Vásquez

V. Personal assistants to the Commissioners

Lourdes Zambrano; Alba Reyes; Abigail Mellin

VI. Experts

Clyde Snow, forensic anthropologist; Robert H. Kirschner, forensic pathologist; John Fitzpatrick, trauma radiologist; Douglas D. Scott, archaeologist and ballistics analyst;

Argentine Team of Forensic Anthropologists: Patricia Bernardi, forensic anthropologist; Mercedes C. Doretti, forensic anthropologist; Luis B. Fondebrider, forensic anthropologist; Claudia Bernardi, Ph. D.

Alberto Binder, lawyer; Alejandro Garro, lawyer; Robert Goldman, lawyer; José Ugaz, lawyer; María del Carmen Bermúdez, journalist; Gabriel Rodríguez, journalist

VII. Codification team

Coordinator: José Ignacio Cano

Team: Daniel Angrisano; Gabriel Catena; Cristina Lemus; Judith Kallick; Nila Pérez; Margreet Smit; Miguel Angel Ventura; Ken Ward

VIII. Administrative personnel

Lilian Delgado; Guillermo Lizarzaburu; Sharon Singer

IX. Permanent security personnel

Joseph Leal (Chief); Manuel Arcos; Alfredo Figueroa; Leo Powell; Kenneth Rosario; Wilfredo Vega

X. Interns

William Cartwright; Denise Gilman; Chris Guarnota; Priscilla Hayner; Mary Beth Hastings; Jean Leong; Maggie Miqueo

XI. Offices

San Salvador, El Salvador; United Nations, New York

I. THE COMMISSIONERS

Belisario Betancur. Colombian, BA in Law and Economics, Bolivarian Pontifical University of Medellín (1955). Married to Rosa Helena Alvarez, three children, five grandchildren. University professor, member of the Spanish Language Academy and the Colombian Academy of Jurisprudence. Former Senator, Ambassador, Minister of Labour. Former President of Colombia (1982-1986). Honorary doctorates from Georgetown University, Washington, D.C. (1984) and University of Colorado, Boulder, Colorado (1988). Member of the Pontifical Commission for Justice and Peace in Rome. Vice-President for Latin America of the Club of Rome and President of the Santillana Foundation for Iberoamerica in Santa Fé de Bogotá.

Reinaldo Figueredo Planchart. Member of the Venezuelan National Congress. Chairman of the Congressional Special Committee on Privatization and the Subcommittee on Analysis and Planning of the Standing Committee for Defence. Former Minister for Foreign Affairs of the Republic of Venezuela (1989-1991); Secretary-General of the Presidency (1989); Special Commissioner for the President of the Republic (1984-1985); Director of the Manufactures Division of the United Nations Conference on Trade and Development (UNCTAD), Geneva (1980-1984); President of the Foreign Trade Institute (1974-1979). Has participated in many international meetings and conferences sponsored by the United Nations, the Organization of Petroleum Exporting Countries (OPEC), financial organizations, the Andean Group, the Non-Aligned Movement, the Group of 15. Head of delegation on various international missions. Columnist on petroleum topics for the periodical El Nacional of Caracas since 1970. Has published a variety of articles in specialized journals. Economist by profession, graduated cum laude from the Free University of Brussels, Belgium.

Thomas Buergenthal. Lobingier Professor of International and Comparative Law, George Washington University Law School, and Director of the George Washington University National Law Center. Served as Judge (1979-1991), Vice-President (1983-1985) and President (1985-1987) of the Inter-American Court of Human Rights. Currently Vice-President of the Administrative Tribunal of the Inter-American Development Bank. Formerly Dean of the Law School, American University, Washington, D.C. (1980-1985) and I. T. Cohen Professor of Human Rights at Emory University Law School. Former Director of the Human Rights Programme of the Carter Center, Atlanta, Georgia (1985-1989). Founded the Inter-American Institute of Human Rights, San José, Costa Rica, in 1980; President (1980-1992); currently Honorary President. Former President of the Human Rights Committee, Section of International Law and Practice, American Bar Association (early 1980 and 1991-1992). Former Vice-President of the American Society of International Law. Author of more than a dozen books and many articles on international law. Graduate of Bethany College, West Virginia; JD., New York University Law School; LLM and SJD in International Legal Studies, Harvard Law School. Honorary doctorates from Bethany College and the University of Heidelberg, Germany.

II. ADVISERS TO THE COMMISSIONERS

Douglass W. Cassel, Jr. DePaul University: Executive Director of the International Human Rights Law Institute, Professor of International Human Rights Law, and Director, Jeanne and Joseph Sullivan Programme on Human Rights in the Americas. Formerly, Counsel, Judge Advocate General's Corps, United States Navy (1973-1976); Staff Counsel (1976-1982) and General Counsel (1982-1992), Business and Professional People for the Public Interest, a not-for-profit legal centre in Chicago involved in litigation and research on civil rights, civil liberties and other legal issues. Travels regularly to Central America for matters involving human rights. Official observer (1991) on behalf of the American Bar Association at the trial in El Salvador of the military personnel accused of murdering the Jesuit priests and two women at the Central American University in 1989. Has published articles on international human rights law in specialized reviews and other periodicals. BA in Economics, Yale University; JD (1972), Harvard Law School, where served as editor of the Harvard Civil Rights-Civil Liberties Law Review.

Guillermo Fernández de Soto. Colombian, age 40, married, three children. BA in Law and Economics, Xaverian University of Bogotá and Georgetown University, Washington, D.C. Deputy Minister for Foreign Affairs of Colombia. Formerly, Legal Adviser to the Inter-American Commission on Human Rights of the Organization of American States (1979-1985). Consultant to the United Nations Development Programme (1987). Head, United Nations technical mission for the drafting of the Special Plan of Economic Cooperation for Central America (1988). Executive Director of the "Foro Interamericano" Centre for International Studies (1988-1990). Currently Dean of the Faculty of International Studies of the Jorge Tadeo Lozano University in Bogotá; Secretary-General of Nueva Fuerza Democrática in Colombia. Author of various books on international politics.

Luis Herrera Marcano. Venezuelan. LLD, Central University of Venezuela. Ambassador. Former International Policy Director and Legal Counsel, Ministry of Foreign Affairs of Venezuela. Professor of International Law, Central University of Venezuela. Former Director of the School of Law and Dean of the Faculty of Juridical and Political Sciences. Member and former President, Inter-American Legal Committee.

Robert E. Norris. United States national. Lecturer, Stephen F. Austin State University, and Managing Attorney, East Texas Legal Services. Ph.D. in Ibero-American Studies, University of New Mexico, and JD, University of Texas Law School, Austin. Senior Human Rights Specialist, Inter-American Commission on Human Rights; contributed to the United Nations Centre for Human Rights study The Rights of Indigenous Peoples. Co-author of the textbook Protecting Human Rights in the Americas: Selected Problems, and of a series of volumes entitled Human Rights: the Inter-American System. Lecturer at the International Institute of Human Rights in Strasbourg (1979-1990) and at the Inter-American Institute of Human Rights (1990-1992).

III. EXECUTIVE DIRECTOR

Patricia Tappatá de Valdez. Born in Bahía Blanca, Argentina. Researcher and consultant on human rights issues in Latin America. BA in Social Work, Faculty of Law and Social Sciences, National University of Córdoba. Studies towards an MA in Political Science, Latin American Faculty of Social Sciences (FLACSO), Buenos Aires. Director, Human Rights Department of the Episcopal Commission for Social Action of Peru (1977-1987). Adviser to the Peace Commission of the Office of the President of Peru (1985-1986). Founder and member of the Executive Committee of the National Human Rights Federation in Peru (1985-1987). Fellowship from the International Human Rights Programme (1988). Since 1991, coordinator of the "Justice in Argentina" programme of the Citizens' Foundation in Buenos Aires.

IV. CONSULTANTS AND RESEARCHERS

Carlos Chipoco. Born in Lima, Peru. LLB summa cum laude from the Pontifical Catholic University of Peru. LLM, Harvard Law School and MA in International Law, Fletcher School of Law and Diplomacy (1990). Professor, Faculty of Law, Pontifical Catholic University of Peru and National University of San Marcos. Visiting Professor, School of Law, University of Puerto Rico. Adviser to the Inter-American Commission on Human Rights before the Inter-American Court of Human Rights. Former Director of the Legal Defence Institute of Peru (1983-1988) and fellow of Americas Watch (1988-1989). Author of En Defensa de la Vida. Ensayos sobre Derechos Humanos y Derecho Internacional Humanitario (CEP, Lima).

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Jayni Edelstein. United States national. BA with distinction, University of Wisconsin (1988), and JD, New York Law School (1992). Worked for three years for the Lawyers Committee for Human Rights, New York. Internships with the International Commission of Jurors (Geneva) and the Centro de Investigación y Educación Popular (Colombia), and clerkships in the United States Court of International Trade, New York, and the United States District Court, Eastern District, New York.

Stener Ekern. Norwegian. BA in Social Anthropology, University of Bergen, Norway (1986). Project Coordinator, FAFO International. Project Officer, programme for assistance to indigenous peoples of the Central American area, Norwegian Agency for International Development (NORAD), NGO Division. Formerly, Project Officer for the Central American area, CARITAS Norway.

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Administration, Spain; Visiting Professor, 1987. External Studies Diploma in Human Rights and Humanitarian Law, Academy of International Law, The Hague. Graduate in international relations from the International Studies Society of Madrid. Since 1987, Professor in the Faculty of Law and on the MA programmes in constitutional law and international law, Pontifical Catholic University of Peru. Legal adviser to the Senate of Peru (1982-1992). Since 1988, chief adviser to the Senate Special Committee on the Causes of Violence and Peaceful Alternatives in Peru; chief adviser to the Chairman of the United Nations Commission on Human Rights (1991).

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V. PERSONAL ASSISTANTS TO THE COMMISSIONERS

Lourdes Margarita Cobo de Zambrano. Born in Caracas, Venezuela. MA in Political Science, Central University of Venezuela (1979). MA in Political Science, Simón Bolívar University (1981). Has worked in Ministry of Foreign Affairs of Venezuela. Member of the Board and researcher, Venezuelan Institute of International Relations (IVRI). Former consultant, Tinker Foundation, Commission for State Reform in Venezuela (COPRE). Edited and contributed to Análisis, a specialized review of the Pedro Gual Diplomatic Academy. Author of "La Política de Fronteras hacia Colombia: Toma de Decisiones, Disgregación y Consenso; El Estudio de las Relaciones Internacionales en Venezuela; Prioridades de la Política Exterior de Venezuela para el Año 2000.

Alba Reyes. Colombian, age 35, economist, married, two children. Assistance in the Office of the President of Colombia (1982-1986). Personal assistant to former President Betancur (1986-1993).

Abigail Mellin. United States national. BA magna cum laude, Southwestern University; JD candidate, George Washington University National Law Center (May 1993). Studied at the Institute for Comparative Politics and Economic Systems, Goldsmith's College, University of London. Former legislative assistance to Senator Tejeda, State Assembly, Texas, and programme coordinator for The Fund for American Studies, Washington, D.C. Has also worked with the House Ways and Means Committee and the Congressional Sunbelt Caucus.

Notes

1/ Published by the United Nations under the title El Salvador Agreements: The Path to Peace (DPI/1208, May 1992).

2/ El Salvador Agreements, supra, p. 30.

3/ El Salvador Peace Agreement (signed at Chapultepec), supra, p. 55.

4/ It is important to mention that, in the San José Agreement on Human Rights, it was the understanding of the Parties to the peace agreements that "human rights" shall mean "those rights recognized by the Salvadorian legal system, including treaties to which El Salvador is a party, and by the declarations and principles on human rights and humanitarian law adopted by the United Nations and the Organization of American States".

5/ See, for example, FMLN, La situación de los derechos humanos a la Luz de los Convenios de Ginebra, p. 5 (1983).

6/ Article 3 (common to the four Conventions): conflicts not of an international character

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) taking of hostages;

(c) outrages upon personal dignity, in particular humiliating and degrading treatment;

(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for ...

7/ See, for example, article 4 of Protocol II.

8/ United Nations, Mexico Agreements, 27 April 1991, Commission on the Truth, "Functions" section, para. 2 (a). Document A/46/553-S/23130, p. 16.

9/ The Asociación Nacional de Educadores Salvadoreños (ANDES) reported that in the period January-June 1981, 136 schoolteachers were executed. United Nations, Report of the Special Representative of the Commission on Human Rights, 1981.

10/ The Inter-American Commission on Human Rights, quoting the United States Embassy, reported that the average number of political murders in El Salvador was approximately 300 a month in 1982. According to the Catholic Legal Aid Office, the figure was 500 a month. OAS-IACHR, Annual Report, 1981-1982, p. 121.

The Archbishop Oscar Romero Christian Legal Aid Office reported the following numbers of civilian victims:

1980: 11,903

1981: 16,266

1982: 5,962

Source: Central American Human Rights Institute (IDHUCA), Los Derechos Humanos en El Salvador durante 1985, vol. II, José Simeón Cañas Central American University, San Salvador, 12 April 1986, p. 39.

11/ In September 1980, the house containing the office of the Human Rights Commission of El Salvador was blown up. Damage was considerable and the bodies of three young people, showing signs of having been brutally tortured, were found at the front door of the office. OAS-IACHR, Annual Report, p. 124.

Attacks against the non-governmental Human Rights Commission were systematic during this period:

On 3 October 1980, Maria Magdalena Henríquez, press secretary of the Commission, was abducted by uniformed police. Her body was found later. On 25 October, Ramón Valladares, the Commission's administrator, was murdered. On 4 December 1981, security forces abducted the Commission's director, Carlos Eduardo Vides, who then disappeared. In August 1982, the Treasury Police abducted América Perdomo, Director of Public Relations, who also disappeared. On 16 March 1983, Marianela García Villas, the Commission's President, was killed when a military patrol ambushed a group of displaced persons.

Americas Watch, El Salvador's Decade of Terror. Human Rights since the Assassination of Archbishop Romero, Yale University Press, 1991, pp. 44-45, 144-148.

12/ According to Christian Legal Aid, 16,266 people, 7,916 of them peasants, were killed between January and December 1981.

Source: Archbishop Oscar Romero Christian Legal Aid Office. See Central American Human Rights Institute (IDHUCA), Los Derechos Humanos en El Salvador durante 1985, San Salvador, April 1986, p. 41.

13/ On 11 November 1981, the non-governmental Human Rights Commission of El Salvador reported that in recent months the bodies of over 400 people had been dumped at the place known as El Playón.

14/ The General Secretary of MNR, Guillermo Manuel Ungo, the Rector of the Central American University, Román Mayorga Quiroz, and businessman Mario Antonio Andino became part of the Junta. Colonels José Guillermo García and Nicolás Carranza were appointed Minister and Deputy Minister of Defence respectively. Other members of the cabinet included Salvador Samayoa (Education), Enrique Alvarez Córdoba (Agriculture), Colonel René Francisco Guerra y Guerra (Under-Secretary of the Interior), Héctor Dada Hirezi and Héctor Oquelí Colindres (Foreign Affairs).

15/ The Organización Democrática Nacionalista (ORDEN) was a civil defence body set up by General Medrano in the 1960s to keep an eye on the peasant population. It became one of the precursors of the death squads.

16/ The Agencia Nacional de Servicios Especiales de El Salvador (ANSESAL) was the State intelligence agency set up by General Medrano. Its last director was Colonel Santibañez. National Security Archives, El Salvador: The Making of US Policy, 1977-1984, Chadwick-Healey, Inc., Alexandria, VA, p. 73.

17/ The Bloque Popular Revolucionario was the largest coalition of organizations in the late 1970s and early 1980s. It was established in 1975 and the sectors represented in it included peasants (the Federación Cristiana de Campesinos Salvadoreños (FECCAS) and the Unión de Trabajadores del Campo (UTC)); teachers (the Asociación Nacional de Educadores de El Salvador (ANDES); shanty-town residents (the Unión de Pobladores de Tugurios (UPT); and students (the Movimiento Estudiantil Revolucionario de Secundaria (MERS)).

The Ligas Populares 28 de Febrero (LP-28) was a smaller, urban-based organization controlled by students. It took its name from the date - 28 February 1977 - when dozens of demonstrators were killed in protests denouncing electoral fraud in the elections in which General Carlos Humberto Romero became President.

The Frente Popular de Acción Unificada (FAPU), founded in 1974, was an organization composed of trade unions, student organizations, peasants and schoolteachers.

The Unión Democratíca Nacionalista (UDN), founded in 1969, was the legal mouthpiece of the banned Salvadorian Communist Party.

18/ By agreement between the Revolutionary Government Junta and the Christian Democratic Party (PDC), the members who resigned were replaced on 10 January by PDC members Héctor Dada Hizeri and José Antonio Morales Elrich and independent José Ramón Avalos Navarrete.

19/ The Agrarian Reform Act decreed the expropriation of landholdings in excess of 1,250 acres. This affected some 372 landowners and a total of 625,000 acres of land. Approximately 85 per cent of the rural population were to benefit. To forestall a reaction by the landowners concerned, the Junta issued Decree No. 155 imposing a state of siege for 30 days.

National Security Archives, El Salvador: The Making of US Policy, 1977-1984, Janet Di Vicenzo, project editor, Chadwick-Healey, Inc., Alexandria, VA, 1984, p. 33.

20/ United States Embassy in El Salvador, cable 00837, 6 February 1980.

21/ In his last Sunday sermon, on 23 March, Monsignor Romero had said: "In the name of God, in the name of this suffering people whose cries rise up to Heaven more urgently with each day that passes, I beseech you, I beg you, I order you to stop the repression."

22/ United States Embassy in San Salvador, cable 02296, 31 March 1980. The Washington Post, 31 March 1980. Op. cit., National Security Archives, El Salvador: The Making of US Policy, 1977-1984, p. 34.

23/ National Guard Major and Director of ANSESAL until the 15 October coup, when he was forced to resign.

24/ On 12 May, Majano lost his influence when Colonel Jaime Abdul Gutiérrez, of the conservative wing, was appointed President of the Revolutionary Government Junta by the armed forces and, as such, became their Commander-in-Chief.

That same day, a communiqué from a group calling itself "death squad" was read out over the telephone to the press, demanding the release of Major D'Aubuisson and the others arrested at Santa Tecla and threatening to blow up any newspapers that did not publish the message. La Prensa Gráfica, 12 May 1980, p. 25.

25/ D'Aubuisson and the other detainees were never brought before the courts, despite the seriousness of the accusations about the death squads and the murder of Monsignor Romero.

26/ On 22 May, the Junta issued Decrees Nos. 264 and 265 amending the Code of Criminal Procedure. The first of these expanded the definition of terrorist activities and prohibited the occupation of public buildings, workplaces and religious establishments. The second decree prohibited bail for persons accused of or sentenced for political offences.

On 24 June, Decree No. 296 prohibited officials and employees of State bodies from taking part in strikes, and ordered immediate dismissal for anyone who promoted or organized work stoppages.

On 22 August, Decree No. 366 gave the executive branch the power to withdraw legal recognition from any State union for taking part in strikes or causing the interruption of essential public services.

On 3 December, the Junta issued Decree No. 507 giving military courts jurisdiction over political offences against the State.

27/ On 26 June 1980, after a national strike, the army and the National Guard attacked the National University, killing between 22 and 40 students and destroying facilities. The Rector of the University, Félix Antonio Ulloa, was assassinated on 29 October.

28/ Op. cit., National Security Archives, The Making of US Policy, 1977-1984, p. 35.

29/ After a brief period in detention, Majano went into exile in March 1981.

30/ The direct complaints received by the Commission on the Truth and referred to in this chronology concerned both parties to the conflict. Most complaints concerned violations committed by members of the armed forces or paramilitary organizations. Only those complaints which, in the Commission's view, were sufficiently substantiated were processed (see annex 5).

31/ The victims were José Rodolfo Viera, President of ISTA, and two AIFLD agricultural advisers, Mark David Pearlman and Michael Hammer.

32/ On 27 December, during one of the first large-scale attacks launched by FMLN on military garrisons, Commander Fermán Cienfuegos of FARN announced that a final offensive would be launched before Reagan's inauguration on 20 January 1981. Op. cit., National Security Archives, El Salvador: The Making of US Policy, p. 38.

33/ On 28 August 1981, a communiqué issued by the Governments of Mexico and France referred to FDR-FMLN as a representative political force for seeking a political solution to the conflict.

34/ On 14 January, in one of his last foreign policy measures, President Carter announced the sending of US$ 5 million in military aid to El Salvador. Among the reasons cited was evidence of Nicaraguan aid to the Salvadorian rebels. Op. cit., National Security Archives, El Salvador: The Making of US Policy, p. 34.

Not long after the Government of Ronald Reagan took office, the State Department sent a cable to the Embassy in San Salvador instructing it to inform the Duarte Government that the United States was planning to launch a diplomatic offensive the following week in Europe and Latin America to demonstrate Cuban and Nicaraguan involvement with the insurgents in El Salvador. Department of State (draft), 2/4/1981.

35/ Op. cit., Americas Watch, pp. 48-49 and 146.

36/ The Miami Herald, 23 August 1981. Op. cit, National Security Archives, p. 42.

37/ Christian Legal Aid, San Salvador, 1984 report.

38/ The breakdown of the Assembly by party was as follows:

Christian Democratic Party: 24 members

Alianza Republicana Nacionalista: 19 members

Partido de Conciliación Nacional: 14 members

Acción Democrática: 2 members

Partido Popular Salvadoreño: 1 member

39/ Decree No. 3 of the Constituent Assembly. The Decree also repealed Decree No. 114, containing the basic legal provisions governing the agrarian reform.

40/ Phase III of the agrarian reform was launched by Decree No. 207 of the Revolutionary Government Junta and enabled peasants who were leasing small plots of land to buy them and gain title to them with financial assistance from the Government. Op. cit, National Security Archives, p. 79.

41/ The New York Times, 7 February 1982.

Newly elected President Reagan, citing the attack on the Ilopango Base, also signed an Executive Order on 1 February authorizing $55 million in emergency military aid for El Salvador (see The Washington Post, 2 February 1982).

42/ According to statistics, acts of sabotage focused on means of transport (46 per cent), the electricity distribution and supply system (23.7 per cent) and roads and railways (5.7 per cent). During the first quarter of 1982, the following bridges were destroyed or damaged: 4 in Santa Ana, 1 in San Salvador, 3 in Usulután, 2 in San Miguel and 1 in Morazán. Centro Universitario de Documentación e Información, Proceso, Año 3, No. 98, February-April 1982.

43/ Op cit., United Nations, Report of the Special Representative of the Commission on Human Rights, 1982, p. 33. Armed Forces of El Salvador, National Police, Datos estadísticos sobre atentados dinamiteros, incendiarios y sabotajes diversos realizados por las diversas agrupaciones terroristas con el fin de destruir la economía nacional, San Salvador, 22 September 1982.

44/ United States Embassy in San Salvador (cable 02165), 3 March 1983.

45/ United States Embassy in San Salvador (cable 00437), 3 December 1982. The information also indicates that the armed forces troop strength was 31,757.

46/ Op cit., Americas Watch, 1991, pp. 146-147.

47/ The Washington Post, 28 December 1982.

48/ Office of the United Nations High Commissioner for Refugees, UNHCR Information, Central America, June 1982, No. 5.

49/ Op. cit., United Nations, Report of the Special Representative of the Commission on Human Rights, p. 20.

50/ Central American Human Rights Institute (IDHUCA), Los Derechos Humanos en El Salvador durante 1985, vol. II, José Simeón Cañas Central American University, San Salvador, 12 April 1986, p. 41.

51/ "Death squads" is a generic term referring to the modus operandi of such groups. They were used as instruments of terror and introduced the systematic practice of massive human rights violations.

52/ Op. cit., OAS-IACHR, Annual Report, 1981-1982, pp. 115-116.

53/ United Nations, Report of the Special Representative of the Commission on Human Rights, 22 November 1982, p. 24.

54/ Archbishop Oscar Romero Christian Legal Aid Víctimas de la Población Civil desde 1977 hasta 1985, February 1986 (mimeo).

55/ Op. cit., Americas Watch, 1991, p. 108.

56/ Decree 210 of the Constituent Assembly referred to the Amnesty and Citizen Rehabilitation Act presented by the President of the Republic; 533 political prisoners were freed by 24 June. The Act also granted amnesty to any rebel who abandoned the armed struggle before 4 July.

57/ The Constitution contained 247 articles and provided for greater control over presidential power. It also reduced the impact of the land reform on landowners. According to a report issued in December by United States labour advisers, only 57,000 of the 117,000 who were eligible to benefit from the reform had exercised their right to purchase up to 17.5 acres of land which they were leasing; more than 10 per cent of those who did exercise that right were either displaced or murdered. The New York Times, 28 December 1983.

58/ The Government was represented by the Salvadorian Peace Commission set up by the Apaneca Pact. Possible participation of the rebels in presidential elections was one of the main issues discussed. The talks failed because FDR-FMLN rejected the conditions of the Peace Commission.

59/ The other bodies were identified as those of Santiago Hernández Jiménez, Secretary-General of FUSS, who disappeared on 25 September, José Antonio García Vázquez and Dr. Dora Muñoz Castillo. La Prensa Gráfica, "El conflicto en El Salvador", second edition, 1983.

60/ Op. cit., Americas Watch, 1991, p. 148.

61/ Op. cit., Americas Watch, 1991, p. 148. The Miami Herald, 1 October 1983.

62/ According to newspaper reports, a group of 20 women and children were surrounded in a dwelling and executed. Another 30 people drowned in Lake Suchitlán while being shot at by soldiers. Op. cit., Americas Watch, 1991, p. 148. The Christian Science Monitor, 21 November 1983.

63/ Congress had set the ceiling on the number of advisers at 55. Starting in June 1983, a contingent of 130 Green Berets stationed in Honduras began training a first group of 2,400 Salvadorian soldiers in anti-guerrilla tactics.

64/ Department of State press briefing, 29 November 1983.

65/ United States Embassy, San Salvador (06349), 18 July 1983.

66/ The New York Times, 5 and 19 November 1983, quoted in op. cit., National Security Archives, pp. 64-65.

67/ United States Embassy, San Salvador (11503), 12 December 1983, The New York Times, 15 December 1983.

68/ On 14 December, the High Command ordered all security forces to look into the existence of the death squads. On 19 December, Captain Eduardo Ernesto Alfonso Avila was arrested on orders of the High Command on suspicion of having participated in the murder of the United States advisers in the Sheraton case. On 21 December, Colonel Nicolás Carranza, Director of the Treasury Police, announced that his forces had captured one member of a squad, though no name was given. La Prensa Gráfica, "El Conflicto en El Salvador", second edition, 1983, pp. 61-62.

69/ The Los Angeles Times, 27 December 1983.

70/ Op. cit., the National Security Archives, p. 63.

71/ Report of the Special Representative, 22 November 1983 (A/38/503).

72/ The following day the House of Representatives approved $67.75 million in emergency aid to El Salvador. Op. cit., the National Security Archives, p. 72.

73/ President Duarte offered to grant amnesty to FMLN and to recognize it so that it could participate as a political party in the elections, if it agreed to lay down its arms. FMLN responded with a counterproposal that would have involved its participating in a provisional Government that would call elections and would reorganize the armed forces. Op. cit., Americas Watch, 1991, p. 12.

74/ On 1 January, the rebels blew up Cuscatlán bridge, the longest in the country, connecting the eastern and western regions. On several occasions, the northern and eastern areas of the country were left without electricity as a result of continuing acts of sabotage. On 21 June, FMLN attacked and occupied the Cerrón Grande hydroelectric power station, leaving 120 people dead. On 30 July, following a number of attacks involving dynamite, train service in the country was suspended. Towards the end of the year, it was reported that FMLN attacks on the economic infrastructure had cost the country 238 million colones. Op. cit., La Prensa Gráfica, "El Conflicto en El Salvador", 1984.

75/ Between 17 and 22 July, 68 civilians were executed by army troops during a military operation in Los Llanitos, Cabañas. Between 28 and 30 August a further military operation by the Atlacatl Battalion in Las Vueltas, Chalatenango, resulted in the massacre of some 50 civilians on the banks of the Guaslinga river. Op. cit., Americas Watch, 1991, p. 148.

76/ According to a cable from the United States Embassy, no murder had been attributed to any known death squad since the end of 1983. United States Embassy, San Salvador (02547), 8 March 1984.

77/ Op. cit., the National Security Archives, p. 70.

78/ Report on the situation of human rights in El Salvador (A/39/636), 9 November 1984.

79/ On 7 March, Lt. Col. Ricardo Arístides Cienfuegos, Head of COPREFA, was executed. On 23 March, General José Alberto Medrano, former Director of the National Guard and founder of ORDEN and ANSESAL, was murdered. On 17 May, Mr. José Rodolfo Araujo Baños, military judge of the Court of First Instance, was killed in an attack. Op. cit., La Prensa Gráfica, "El Conflicto en El Salvador", p. 81.

80/ Inés Guadalupe Duarte Durán was abducted, together with her friend, Ana Cecilia Villeda. On the 16th, an organization calling itself Frente Pablo Castillo claimed responsibility for the abduction. Op. cit., La Prensa Gráfica, "El Conflicto en El Salvador", p. 81.

81/ Op. cit., Central American Human Rights Institute (IDHUCA), Los derechos humanos en El Salvador durante el año 1985, fascicle II, pp. 79-81.

82/ In a letter dated October 1985 to Monsignor Rivera y Damas, the population of Suchitoto reported that the following damage had occurred between May and October 1985: 39 bombings, 4 landings, 32 machine-gunnings, 28 raids, 252 captures, 26 dead, 9 wounded, 28 houses destroyed, 41 manzanas (approximately 25 hectares) of farmland and considerable quantities of corn destroyed. Op. cit., IDHUCA, Los derechos humanos en El Salvador durante el año 1985, fascicle II, p. 43.

83/ Op. cit, IDHUCA, Los derechos humanos en El Salvador durante el año 1985, fascicle II, p. 39.

84/ This list refers only to cases for which testimony from survivors has been received. Op. cit., IDHUCA, Los derechos humanos en El Salvador ..., p. 67.

85/ Op. cit., La Prensa Gráfica "El Conflicto en El Salvador", p. 76.

86/ The figures given by the various sources are as follows: Legal Protection: 3,306; Legal Aid: 1,714; Human Rights Commission of El Salvador (non-governmental): 1,995; Human Rights Commission of El Salvador (governmental): 1,810; and United States Embassy: 1,855. Op. cit., IDHUCA, Los derechos humanos en El Salvador ..., p. 36.

87/ Op. cit., La Prensa Gráfica, "El Conflicto en El Salvador", p. 86.

88/ Op. cit., La Prensa Gráfica, p. 85.

89/ The document entitled "Procedure for the establishment of a firm and lasting peace in Central America", known as the "Esquipulas II Agreement", was signed by the Central American Presidents on 7 August 1987 in Guatemala City. Among the main points of the Agreement are the objective of concluding a cease-fire within 90 days, the establishment of national reconciliation commissions, a general amnesty, formation of an International Verification Commission and the termination of logistical assistance and arms supplies to all armed groups in the region.

90/ "The humanization of the conflict" refers to the objectives of halting such practices as abductions, bombings, indiscriminate attacks on civilians, summary executions and the indiscriminate planting of mines, etc.

91/ In a paper issued on 22 July 1987, Amnesty International expressed concern about what appeared to be a campaign of repression against the cooperative movement. Over 80 cooperative workers and leaders had disappeared, been summarily executed, arbitrarily detained or beaten.

United Nations, Report of the Special Representative to the Commission on Human Rights, 1988, p. 3.

92/ The Act conferred unconditional amnesty on anyone who had been involved in political offences or politically motivated ordinary offences committed prior to 22 October 1987 in which fewer than 20 persons had participated. This option was also applicable to the rebels if they came forward, renounced the use of violence and manifested their desire to be amnestied within 15 days following the promulgation of the Act.

The Act would not apply to persons who: (a) participated in the murder of Monsignor Romero; (b) engaged in kidnappings for profit; (c) were involved in drug trafficking; or (d) participated in the murder of Herbert Anaya.

Op. cit., United Nations, Report of the Special Representative to the Commission on Human Rights, 1988, p. 19. OAS-ICHR: Report on the situation of human rights in El Salvador, 1978, p. 299. Amnesty International: Annual Report, 1988, p. 137.

93/ The United Nations Special Representative said that the broad scope of the Act that had been promulgated might make it even more difficult to overcome the climate of impunity that existed in El Salvador.

94/ "... the Esquipulas II Agreement is not being served by an act that pardons the murderers of non-combatants and whose authors are connected with FMLN, the armed forces or the death squads".

95/ Op. cit., United Nations, Report of the Special Representative to the Commission on Human Rights, 1988, p. 19.

96/ Op. cit., United Nations, Report of the Special Representative, 1988, p. 5.

97/ Op. cit., United Nations, Report of the Special Representative to the Commission on Human Rights, 1988, p. 12.

98/ Op. cit., United Nations, Report of the Special Representative to the Commission on Human Rights, 1987, p. 18.

99/ Op. cit., OAS-ICHR, Annual Report of the Inter-American Commission on Human Rights, 1987-1988, p. 294. This report estimates the loss of life caused by the civil war at 60,000 persons.

100/ On grounds of an error in procedure, the Supreme Court revoked the request for the extradition of Captain Alvaro Saravia, who was implicated in the murder of Monsignor Romero.

With regard to the implementation of the Amnesty Act, military judge Jorgé Alberto Serrano Panameño, just before handing down his decision on the case of abductions for purposes of extortion, stated that he opposed granting amnesty to the officers implicated in those cases. The following day, 11 May, he was shot dead by persons unknown in the doorway of his home.

101/ Op. cit., Proceso, "Annual Summary", San Salvador, December 1988, p. 27.

102/ Source: IDHUCA. See in Proceso, "Annual Summary", December 1988, p. 30.

103/ Americas Watch pointed out that "... both the Government and FMLN appear to have violated the rules of war during the first week of the offensive. Op. cit., United Nations, Report of the Special Representative ..." 1990, p. 4.

104/ Op. cit., La Prensa Gráfica, 1989, p. 111.

105/ Op. cit., OAS-ICHR, Annual Report, 1989-1990, p. 140.

106/ Alfredo Cristiani received 53.83 per cent of the 939,078 valid votes counted, higher than the 36.03 per cent received by the Christian Democratic candidate, Fidel Chávez Mena.

107/ On 28 August, army units opened fire on 15 university students, killing one and wounding six others. On 16 December, Imelda González, a lecturer at the National University in Santa Ana, was killed.

108/ Op. cit., OAS-ICHR, Report on the human rights situation in El Salvador, 1989-1990, p. 145.

109/ Op. cit., United Nations, Report of the Special Representative of the Commission on Human Rights, 1989, p. 14.

110/ Edgard Antonio Chacón was President of the Institute of International Relations and a columnist known to have extreme anti-communist opinions. On 30 June, while driving with his wife, he was attacked and died of gunshot wounds.

Both COPREFA and the widow of the deceased blamed FMLN urban commandos for the killing, but the charge was denied by FMLN.

Gabriel Eugenio Payes Interiano was a computer engineer affiliated with ARENA. He was shot in the street on 19 July and died on 21 August after a stay in hospital.

111/ The fourth Summit, Esquipulas IV, was held at Tela, Honduras, from 5 to 7 August 1989 with the five Central American Presidents in attendance. In chapter III of the annex, the Governments of the Central American countries urged FMLN to hold a constructive dialogue with a view to achieving a just and lasting peace. At the same time, the Central American Governments urged the Government of El Salvador to arrange, with full guarantees, the integration of the members of FMLN in peaceful life.

Op. cit., United Nations, Report of the Special Representative to the Commission on Human Rights, 1990, p. 4.

112/ On 31 October 1989, the bombing of FENASTRAS headquarters left 10 trade unionists dead and about 30 injured. Among the dead was the leader of Febe Velázquez. That same day, a bomb injured four people at the headquarters of the Comité de Madres de Presos Políticos, Desaparecidos y Asesinados de El Salvador (COMADRES).

Op. cit., Americas Watch, El Salvador's Decade of Terror, p. 156.

113/ Op. cit., La Prensa Gráfica, San Salvador, p. 109.

114/ The Special Representative, in theory, conceded that the perpetrators might have ties to members of the armed forces and security forces or be tolerated and protected by them.

United Nations, Report of the Special Representative of the Commission on Human Rights, 1990, p. 10.

115/ Noteworthy among those acts was the murder of the Chief of the Legal Department of the Armed Forces Joint Staff, Major Carlos Figueroa Morales, for which the FMLN "Modesto Ramírez" commando unit claimed responsibility.

Op. cit., United Nations, Report of the Special Representative of the Commission on Human Rights, 1990, p. 13.

116/ OAS-ICHR, Report on the situation of human rights in El Salvador, 1990-1991, p. 472.

117/ Op. cit., United Nations, Report of the Special Representative of the Commission on Human Rights, 1990, p. 11.

118/ According to the timetable, the process would comprise two phases. The first phase would be aimed at reaching a set of political agreements leading to a cease-fire and would cover the topics of the armed forces, human rights, the judicial and electoral systems, constitutional reforms, economic and issues and United Nations verifications reached of the agreements. The second phase would be devoted to establishing the necessary conditions and guarantees for reintegration of the members of FMLN into the institutional, civil and political life of the country.

Op. cit. United Nations, Report of the Special Representative of the Commission on Human Rights, 1991, p. 4.

119/ On 19 November, the United Nations Secretary-General, Javier Pérez de Cuéllar, called on FMLN not to jeopardize the negotiating process. Mexico, Canada and the Central American Governments also appealed to FMLN to suspend its new offensive. Finally, on 17 December, the Presidents of the region, at a summit meeting held at Puntarenas, Costa Rica, demanded that FMLN declare a cease-fire.

120/ In his Sunday sermon on 3 February, Monsignor Rivera y Damas accused members of the First Infantry Brigade of this mass murder. Op. cit., La Prensa Gráfica, p. 115. Op. cit., Americas Watch, El Salvador's Decade of Terror, p. 160.

121/ The new Legislative Assembly, enlarged from 60 to 84 representatives in 1991, comprised 39 deputies from ARENA, 26 from the Christian Democratic Party, 9 from the Partido de Reconciliación Nacional, 8 from Convergencia Democratica and 1 each from the Unión Democrática Nacionalista and the Movimiento Auténtico Cristiano.

122/ On 9 February, the offices and typewriters of Diario Latino were destroyed by arson. Five days of truce at the beginning of March were followed by an escalation of clashes, attacks on military installations and army personnel, etc. resulting in more than 100 people killed in action.

123/ Among its most important provisions are the creation of a National Civil Police under the direction of civilian authorities independent of the armed forces, the establishment of the Office of the National Counsel for the Defence of Human Rights, an allocation to the judiciary from the State budget amounting to no less than 6 per cent of current income, the creation of a Supreme Electoral Tribunal and the redefinition of military jurisdiction as an exceptional procedure limited to dealing with purely military offences and misdemeanours. In this Mexico round it was also agreed to establish a Commission on the Truth to investigate serious acts of violence that had occurred since 1980 and whose impact on society demanded that the public should know the truth.

124/ El Salvador Peace Agreement, Chapultepec, 16 January 1992, 5, End to Impunity: "The parties recognize the need to clarify and put an end to any indication of impunity on the part of officers of the armed forces, particularly in cases where respect for human rights is jeopardized. To that end, the Parties refer this issue to the Commission on the Truth for consideration and resolution".

125/ In investigating and resolving the cases referred to below, Commission members examined documents in El Salvador and other countries; interviewed numerous participants, witnesses, victims and relatives; requested information from Government bodies; consulted court dossiers; visited places where incidents had occurred; and requested copies of instructions and orders given.

Requests for precise information on various cases were transmitted to Ministers and heads of Government departments, and to what is now the former FMLN Command.

In the case of requests for reports from the Ministry of Defence, the Commission received replies to some of its inquiries. However, many of the replies were incomplete.

With regard to requests for reports that were not met and that in some cases referred to events prior to 1984, the Ministry of Defence informed the Commission that "no records exist since the General Staff was completely restructured in that year" (letter No. 10692, 27 November 1992). The Armed Forces Press Committee (COPREFA) told the Commission that it did not have any information for the period from January 1980 onwards and currently had available only the archive of press releases from January 1988 onwards (letter of 29 October 1992).

The replies to requests made to FMLN were also, in some cases, incomplete. the former Command attributed the inability to provide precise information to the Commission to the irregular nature of the war and the consequent lack of records.

126/ A detailed analysis of complaints and lists of victims are to be found in the annexes. More than 18,000 complaints from indirect sources were also registered, of which over 13,000 were analysed. The figures for direct and indirect sources have not been added together. It is estimated that as many as 3,000 complaints were duplicated in the two sources. In any event the Commission believes that the total number of complaints registered is at least 22,000.

127/ The Commission also received thousands of other complaints from institutions which, once registered, could not be analysed either because they did not meet the corresponding minimum requirements, even though institutions had been informed of these in good time, or because the incidents reported had occurred outside the period covered by the mandate.

128/ For the investigation of this case, the Commission interviewed many witnesses, reviewed the court dossier and other documents and reports on the case, and visited the scene of the murders.

129/ The Commission received testimony from survivors and eyewitnesses. The accounts agree and are consistent with one another in describing the circumstances and indicating who was responsible. The relevant documentation was also reviewed. The court records and the forensic examination confirm that the incident occurred.

Belén Gûijat canton was under the military jurisdiction of the Second Military Brigade which, in 1980, was under the command of Colonel Servio Tulio Figueroa. The Commission issued a summons to that officer through the Ministry of Defence. The only response it received - belated at that - was that he had retired. Information was also requested from the Minister of Defence concerning military operations carried out at the time in the district where the incident occurred; that request went unanswered. Despite repeated requests to the Minister of Defence for the names of those in charge of the security forces in Santa Ana and for information on military operations in Metapán in May 1980, no answer was received.

Another request to the present Commander of the Second Infantry Brigade went unheeded. A visit to Brigade headquarters to consult the records proved fruitless. Generally speaking, the competent military authorities did not cooperate in the investigation of this case.

130/ According to witnesses, he died a few years after the incident.

131/ The report on the medical examination of the bodies states specifically that a number of the bodies had what are known as powder burns. The forensic interpretation of this type of wound refers to the carbon ring that impregnates the skin when a person is shot at close range (under 30 centimetres). This carbon ring is caused by the deflagration of the powder when a shot is fired, leaving an indelible mark on the deceased's skin; in other words, the shot "burns the skin".

132/ When a person is shot, it is usually quite simple to determine where the bullet entered the body and where it exited, since the dimensions and characteristics of the two holes are quite different. Accordingly, the only logical interpretation of the statement that the forensic doctor was unable to make this determination is that the deceased were shot at such close range and with weapons of such large calibre that the bodies were literally destroyed.

133/ Enrique Alvarez Córdoba, former Minister of Agriculture and Livestock and President of the Frente Democrático Revolucionario (FDR). There were two bullet holes in his body. El Diario de Hoy, 29 November 1980.

134/ Juan Chácon, age 28, General Secretary of the Bloque Popular Revolucionario (BPR). There were three bullet holes in his body, one in the ear, another in the forehead and one in the thorax, and signs of strangulation. F. 7, court dossier No. 600, Fourth Criminal Court of San Salvador.

135/ Enrique Escobar Barrera, age 35, a member of the Movimiento Nacional Revolucionario (MNR). There were two bullet holes in his temple and signs of strangulation. F. 5, court dossier, quotation 2.

136/ Manuel de Jesús Franco Ramírez, age 35, a graduate in international relations and a member of the Partido Unión Democrática Nacionalista (UDN). There were four bullet wounds in his thorax and signs of strangulation. F. 6, court dossier, quotation 2.

137/ Humberto Mendoza, age 30, a member of the Movimiento de Liberación Popular (MLP). There were two bullet wounds in his body, one in the temple and the other in the thorax, and signs of strangulation. F. 4 court dossier, quotation 2.

138/ Doroteo Hernández, journalist and trade union leader of the Unión de Pobladores de Tugurios (UPT). At the time, he was not identified as a leader of FDR; however, the UCA Human Rights Institute/Christian Legal Aid document sent to the Commission on the Truth states that he was a leader of that organization.

139/ The Frente Democrático Revolucionario (FDR) came into being on 18 April 1980 as a result of a political agreement between the Frente Democrático (FD) and the Coordinadora Revolucionaria de Masas (CRM). It was formally established on 18 April 1980 by various political, popular and mass organizations. A number of its leaders had held prominent government posts in the first Revolutionary Junta which had overthrown General Romero on 15 October 1979. At the time, the leadership of FDR consisted of the five victims, Leoncio Pichinte and Juan José Martel.

140/ The National University of El Salvador was militarized on 26 June 1980, along with the Western University Centre and the Eastern University Centre, Revista ECA, No. 389, March 1981, p. 240. Other human rights organizations were also persecuted.

141/ "G3" rifles were the regulation weapon of the security forces at the time and were used by the armed forces of El Salvador in the war against Honduras in 1969.

142/ The JRG communiqué speaks of 13, a UPI cable mentions 200, Prensa Gráfica, 28 November 1980.

143/ The dossier notes that the justice of the peace made a visual inspection, that the bodies were identified and that two death certificates were issued. There was no police report of any kind, and nothing at all was done by the judicial authorities; the case was finally closed because no proceedings had been carried out during a given period of time. This case clearly demonstrates the failure of the judiciary to function.

144/ Major Roberto D'Aubuisson stated publicly in a communiqué "Right now, based on the information available to us, we attribute responsibility to DRU, acting on direct orders from Colonel Majano ...".

145/ Communiqués of the Brigada Maximiliano Hernández Martínez, the Revolutionary Government Junta, the armed forces, Major Roberto D'Aubuisson, FDR, FMLN, Revista ECA No. 386, December 1980.

146/ Another significant point is that neither President Duarte nor other important Christian Democratic leaders were in the country, nor was Colonel Majano.

147/ Letter dated 9 December 1992 from the Commission on the Truth to the Chief of the National Police.

148/ The funeral itself turned into another act of violence when an explosive device blew up.

149/ The Commission on the Truth interviewed eyewitnesses, diplomats, senior commanders of the National Guard and the armed forces, members of the Maryknoll Order, relatives of the victims, lawyers for the defendants and the churchwomen's relatives, and a member of the court assigned to the case. In addition, the court dossier was reviewed and governmental and non-governmental reports were analysed. Colonel Zepeda Velasco was invited, unsuccessfully, to testify on several occasions.

150/ Rogers-Bowdler report, p. 10.

151/ Ibid., pp. 13-14.

152/ See the statement by Major Oscar Armando Carranza, who said that Colonel Eugenio Vides Casanova had ordered an investigation into the deaths of the churchwomen.

153/ Harold R. Tyler, Jr., The Churchwomen Murders: A Report to the Secretary of State, 2 December 1983 (known as the Tyler Report), p. 22.

154/ Ibid., pp. 29-30.

155/ Ibid., p. 24. See also the judicial statement by Lizandro Zepeda, vol. 2, f. 266, 23 June 1982, where he reports that he interviewed one person per day and that no conclusions were reached, although several people were interviewed.

156/ Judge Tyler concluded that Major Zepeda had probably informed Colonel Vides Casanova. Tyler Report, p. 26.

157/ Ibid., pp. 31-32.

158/ Ff. 102, 147-57.

159/ See President Duarte's speech, televised on 10 February 1982.

160/ Statement by Dagoberto Martínez, f. 132, vol. 3, 30 July 1983.

161/ See vol. 5 of the court dossier, f. 26, "Decision of the jury", 24 May 1983. See also ff. 26 and 65, 24 May and 20 June 1984.

162/ The New York Times, 25 May 1984, pp. 1 and 6.

163/ On 16 December 1980, United Nations Ambassador Jeane Kirkpatrick said: "I don't think the government (of El Salvador) was responsible. The nuns were not just nuns; the nuns were political activists. We ought to be a little more clear-cut about this than we usually are. They were political activists on behalf of the Frente and somebody who is using violence to oppose the Frente killed them." Tampa Tribune, 25 December 1980, pp. 23A and 24A, col. 1.

Secretary of State Alexander Haig testified as follows before the Foreign Affairs Committee of the House of Representatives: "I would like to suggest to you that some of the investigations would lead one to believe that perhaps the vehicle that the nuns were riding in may have tried to run a roadblock or may have accidentally been perceived to have been doing so, and there may have been an exchange of fire." See Foreign Assistance Legislation for Fiscal Year 1982: Hearings before the House Committee on Foreign Affairs, 97th Congress, First Session 163, 1981.

164/ The day after the deaths, President Jimmy Carter suspended aid to El Salvador, The New York Times, 14 January 1981.

In April 1981, the United States Congress was considering aid to El Salvador. On 26 April, Embassy officials met with the Minister of Defence García and with Vides Casanova and told them that the failure to investigate the case was jeopardizing United States aid. On 29 April, members of the National Guard were arrested and $25 million in military aid was approved the next day. See: Di Vicenzo, Janet, project ed., El Salvador: The Making of U.S. Policy, 1984-1988, vol. 1.

The day after members of the security forces were convicted, the United States Congress approved $62 million in emergency aid. See: USA Today, 25 May 1984, p. 9A. See also The Boston Herald, 25 May 1984, p. 5.

165/ Tyler Report, p. 63.

166/ Some of the evidence not included in the condensed version provided by the judge is as follows: (1) F. 68: judicial statement by José Dolores Meléndez, local commissioner, one of the first witnesses, who notified the justice of the peace and identified the bodies as "unknown"; (2) Ff. 111-115: statements made to the Medrano group by Santago Nonualca, who saw the white minibus going to and returning from the scene of the crime; (3) Ff. 120-133: statements made by National Guard members to the Medrano group concerning Colindres' actions before and after the murders; (4) F. 255: court order to take statements from Vides Casanova, Medrano and Zepeda Velasco; (5) F. 264: judicial statement by Medrano, who remembered little about his own investigation.

167/ In view of the total absence of investigations into the El Junquillo massacre, on 28 November 1992 the Commission on the Truth asked the Minister of Defence and Public Security, General René Emilio Ponce, to provide the Commission with the following information: details of the military units which took part in the military operation carried out between 10 and 12 March 1981 in the cantons of Agua Blanca and El Junquillo in the district of Cacaopera, Department of Morazán; the names of those responsible for ordering the operation and the orders they gave, together with the duties assigned to each military unit; the names of officers, non-commissioned officers and soldiers and the duties assigned to them; a copy of the operations report received by the Armed Forces General Staff and/or the Ministry of Defence concerning the results of the operation, together with the information available to the Ministry of Defence on the events which occurred in El Junquillo canton and in the hamlet of Flor Muerto in Agua Blanca canton, district of Cacaopera, Department of Morazán, between 10 and 12 March 1981.

At the time of drafting of this report, no reply to this request had been received from the Minister of Defence and Public Security.

The Commission received testimony from persons who made statements concerning the events that took place in El Junquillo canton and from other persons from whom the witnesses had sought assistance. It also requested information from the Government of El Salvador and from Military Detachment No. 6 at Sonsonate, and summonsed an army officer. No reply was received to the request for information and the officer concerned failed to appear.

All the above factors were taken into consideration.

168/ During March 1982, there were some 700 journalists, photographers and television technicians in the country. Bonner, Raymond. Weakness and Deceit, Times Books, New York, 1984, p. 295.

169/ F. 252 of the dossier.

170/ Report I, p. 2.

171/ The Commission checked the video tapes and cassettes recorded by the journalists at the prison.

172/ According to official information transmitted to the Commission by the armed forces, there was no military detachment at Usulután at the time, only the Sixth Infantry Brigade, under the command of Lieutenant Colonel Elmer González Araujo.

173/ Record of the interrogation at Treasury Police headquarters. Annex II of report I.

174/ Ff. 73 et seq. of the dossier.

175/ F. 254 of the dossier.

176/ Interrogation record, annex II, report I.

177/ Report I, p. 3.

178/ Folio Ff. 73 et seq. of the dossier.

179/ A copy of the newspaper article can be found in annex III to report I. After studying the text of the press release, Colonel González denied that it was the work of COPREFA, saying that it has been written by the Treasury Police and passed on to COPREFA for publication, together with the photographs.

180/ F. 254 of the dossier.

181/ Report I, and f. 254 of the dossier.

182/ Ff. 246 et seq. of the dossier.

183/ F. 246 of the dossier.

184/ F. 246 of the dossier.

185/ Supplementary report of the investigation into the circumstances surrounding the events which led to the death of four Dutch journalists on 17 March 1982 in El Salvador, Ministry of Foreign Affairs of the Kingdom of the Netherlands, The Hague, 28 May 1982 (hereinafter referred to as report II).

186/ Report II, p. 7.

187/ Ff. 246 and 254 of the dossier. A Norwegian journalist staying in the same house as Wertz spoke to him as he was coming out of the shower, at 6.30 p.m.

188/ Report II, p. 1.

189/ Report II, p. 2.

190/ Ff. 117 et seq. of the dossier. Pseudonym of Napoleón Romero García.

191/ "Martín" said that, about 50 metres from the meeting point, he saw a blue pick-up truck with two people in it on the road to Santa Rita (report II, p. 4). Wertz, who was driving the minibus along the same road at the time, made no mention of this vehicle in any of his statements.

192/ Report II, p. 4. The sergeant also said that a number of men were hit by the first shots fired. Report II, p. 14.

193/ Report II, p. 6.

194/ Report II.

195/ Statement by the sergeant, report II, pp. 12 ff.

196/ Sergeant Canizales, report II, p. 13.

197/ According to information received by the Commission on the Truth from a number of sources, the intelligence data came from the Treasury Police, which had had the journalists under surveillance. Bonner, Raymond. Weakness and Deceit, p. 295.

198/ Report II, p. 15.

199/ F. 76 of the dossier.

200/ Report I, p. 11.

201/ Report II, p. 15. Dossier of the Office of the Attorney General of the Republic, ff. 1, et seq.

202/ F. 254 of the dossier.

203/ F. 254 of the dossier.

204/ Report II, p. 9.

205/ Report II, pp. 12 ff.

206/ The Commission on the Truth received complaints on the case and interviewed witnesses, survivors and eyewitnesses, members of the Asociación Nacional de Indígenas (ANIS), members of the armed forces, civil defence members, members of popular organizations, members of the governmental Human Rights Commission and others. The dossier of the criminal proceedings was reviewed. The place of the arrests and the massacre was visited. Reports were also received from diplomatic and news sources, and governmental and non-governmental reports were reviewed. Carlos Sasso Landaverry, who was summonsed, did not appear before the Commission.

207/ Statement by Captain Figueroa Morales, Ministry of Defence investigation. F. 428.

208/ Judicial statement by Florencia Cruz Sánchez, mother of Gerardo Cruz Sandoval, 3 March 1983. F. 28.

209/ Statement by María Isabel Arevalo Moz, companion of José Guido García, 28 February 1983.

210/ Judicial statement by Nicolasa Zetino de Pérez, mother of Pedro Pérez Zetino and Benito Pérez Zetino, 28 February 1983. Ff. 19-20.

211/ Ibid.

212/ Statement by Felipa Bonilla, companion of Marcelino Sánchez Viscarra. Ff. 20-21.

213/ Judicial statement by Francisca Jiménez de Mártir, wife of Juan Bautista Mártir Pérez, 28 February 1983. Ff. 22-23.

214/ Judicial statement by Santos Márquez, wife of Héctor Manuel Márquez. Ff. 21-22.

215/ Judicial statement by eyewitnesses Aminta Ayala de Ayala (f. 16) and Candelario Elena (f. 26). See also statements by Adán Mejía Nataren (f. 15), Hortensia Dubón Ayala (f. 17), Ubaldo Mejía (ff. 18-19), Evangelina Escobar Mejía de Alemán (f. 25) and Rubenia López Morales (f. 27).

216/ Statement by Hortensia Dubón Ayala, companion of Antonio Mejía Alvarado (f. 17).

217/ Judicial statement by Adán Mejía Nataren, father of Lorenzo Mejía Carabante and uncle of Romelio Mejía Alvarado, 26 February 1983. F. 15.

218/ Ibid.

219/ Judicial statement by Candelario Elena, father of Ricardo García Elena, 1 March 1983. F. 26.

220/ Judicial statement by Evangelina Escobar Mejía de Alemán, wife of Francisco Alemán Mejía, 1 March 1983. F. 25.

221/ Judicial statement by Rebenia López Morales, sister of Leonardo López Morales, 2 March 1983. F. 27.

222/ Judicial statement by Aminta Ayala de Ayala, wife of Alfredo Ayala, 26 February 1983. F. 16.

223/ Statement by Ubaldo Mejía, father of Martín Mejía Castillio. Ff. 18-19.

224/ Colonel Elmer González Araujo is also referred to indiscriminately as Colonel Aráujo throughout the case.

225/ Inspection of the body of Alfredo Ayala, ff. 4-5.

226/ Statement by Captain Figueroa Morales, f. 428.

227/ According to all the soldiers who made depositions, they did not take anyone living in Las Hojas canton from their homes at any time, and they were not aware that any of their colleagues or superiors had done so. Ff. 424, 426, 432, 433 and 434. See also: statements by Rufino Raymundo Ruíz, José Reyes Pérez Ponce, José Sermeño, René Arevalo Moz, Teodoro Rodríguez Pérez and the Ministry of Defence investigation.

228/ Statement by Captain Figueroa Morales, f. 429.

229/ Letter from Infantry Colonel Napoleón Alvarado to the Minister of Defence, 20 April 1983, f. 411.

230/ Ibid., f. 442. This report was not submitted to the court until 15 December 1986, more than three years later, under the instructions of the Vice-Minister for Defence. F. 443.

231/ On 16 February 1984, the Attorney General gave his opinion on the merits of the evidence, and took the view that the corpus delicti had been established by the inspection and identification of the bodies and that the criminal responsibility of the defendants had been established with the testimony of the witnesses. See: f. 317.

The defendants included Vicente Sermeño, Salvador Sermeño, Juan Aquilino Sermeño, Mario Pérez, René Arevalo Moz, Santiago Sermeño, Marcial Cáceres, Ileandro Pérez, Pedro Pérez, Vicente Sermeño, Alonso Inocente Cáceres and José Domingo Cáceres.

232/ The accused were Marcial Cáceres Rosa, René Arevalo Moz, Mario Arias Pérez, Pedro Pérez González, Leandro Pérez González, Salvador José Sermeño and Vicente Sermeño. At that time, there were no eyewitnesses to the participation of identified members of the armed forces. F. 318.

233/ F. 381.

234/ F. 382.

235/ F. 397.

236/ He said, "... since all the proceedings requested by the Office have been carried out ... without bringing about any change in the situation of the dismissed defendants in the case ... the case is dismissed in favour of the defendants ...". F. 471.

237/ F. 486.

238/ Article 1 of the Amnesty Act provided: "Art. 1. - Absolute and full amnesty shall be granted to all persons, whether nationals or aliens, who participated as direct or indirect perpetrators or as accomplices in committing political crimes, related common crimes or common crimes carried out by at least 20 persons ...". The Act contained a provision on pending cases. Article 4 (3) provided that "In the case of accused persons whose cases are pending, the competent judge shall of his own motion decree a general dismissal of proceedings in favour of the defendants without abatement of the action at law and shall order their immediate release." Article 4 (4) states: "In the situations regulated in paragraph 3, a judge or court that is for any reason hearing trials or proceedings brought for crimes indicated in this Act must refer them back within a period not exceeding 72 hours to the competent judge of first instance who was originally hearing those trials." Decree No. 805, vol. No. 297, Official Gazette No. 199, 28 October 1987.

239/ Ff. 546 et seq. The Court determined, on the basis of the testimony of the injured parties and of Figueroa Morales, that more than 20 people had participated in the operation carried out on 22 February 1983 in Las Hojas canton, although only 14 of them had been identified. The Court also noted that the Legislative Assembly had considered the possibility of making an exception for the Las Hojas case, so that the accused would not benefit from the special amnesty, but that in the end the Legislative Assembly had tacitly included it in the amnesty by not treating it as an exception. Ff. 551-52.

240/ El Salvador, Inter-American Commission on Human Rights, 24 September 1992. Report No. 26/92, case No. 10,278, para. 1.

241/ Report No. 26/92, para. 1.

242/ Ibid., para. 11.

243/ Ibid., para. 4.

244/ Ibid., para. 5.

245/ The Commission reviewed the complaints submitted by Americas Watch, the Archdiocesan Legal Protection Office and the non-governmental Human Rights Commission, the dossier of the criminal case and the report of the Commission for the Investigation of Criminal Acts. It also received information from diplomatic sources and from witnesses.

The Commission asked Colonel René Arnoldo Majano for official information on the activities of the Fifth Brigade on the date of the incident, in particular the name of the officer who was acting as Chief of Service. There was no response to this request for information.

246/ Statement by Second Lieutenant Arnoldo Vásquez Alvarenga and Deputy Sergeant Hernán Ayala Arias, at the offices of the Vice-Ministry of Public Security of the Ministry of Defence.

247/ Statement by Lieutenant Gálvez Gálvez and Second Lieutenant Vásquez Alvarenga at the offices of the Vice-Ministry of Public Security.

248/ Statement by Deputy Sergeant Hernán Ayala Arias and Second Lieutenant Vásquez Alvarenga at the offices of the Vice-Ministry of Public Security.

249/ Statement by Second Lieutenant Vásquez Alvarenga at the offices of the Vice-Ministry of Public Security.

250/ Statement by Lieutenant Gálvez Gálvez at the offices of the Vice-Ministry of Public Security.

251/ Statement by Lieutenant Gálvez Gálvez at the offices of the Vice-Ministry of Public Security.

252/ Statement by Captain Peña Durán and Major Beltrán Granados at the offices of the Vice-Ministry of Public Security. The latter said that he refused permission because he had to consult the commanding officers to see what they felt about that possibility. Beltrán also said that Peña had informed him that units of the Jiboa Battalion had arrested several people and confiscated subversive material, and that he had added that the arrests had been witnessed by the villagers and that the previous night he had been ordered to eliminate the detainees.

253/ Statement by Captain Peña and Lieutenant Gálvez at the offices of the Vice-Ministry of Public Security.

254/ In his statement at the offices of the Vice-Ministry of Public Security, Captain Peña Durán said that he had contacted the Brigade a second time and had spoken with then Major Rodríguez Molina, requesting and receiving his permission to go to Brigade headquarters.

255/ Captain Peña said in his statement at the offices of the Vice-Ministry of Public Security that he had spoken to the officers mentioned above in the order indicated. However, in the statement taken from him on this occasion, it was noted only that he had reported "on the situation" in San Francisco canton but not on the existence of the order to execute the detainee. When he testified before the Commission on the Truth, Captain Peña Durán said that he had expressly informed Rodríguez Molina, Turcios and Chávez Cáceres of the existence of the order. However, he said that when he informed Chávez, the latter simultaneously received the report that the detainees had died in an ambush. Colonel Chávez Cáceres said in his statement to the Commission on the Truth that Captain Peña had only informed him of the general situation in San Francisco canton. Colonel Turcios said that Captain Peña had reported to Major Rodríguez Molina, who had gone to the office of Lieutenant Colonel Turcios. They had then both gone to report to Colonel Chávez Cáceres. He does not recall having received as part of Peña's report the information that the detainee was going to be executed.

256/ Statement by Lieutenant Gálvez Gálvez at the offices of the Vice-Ministry of Public Security.

257/ Statements by Lieutenant Gálvez Gálvez, Reynaldo Aguilar Hernández and Oscar Cerón Sánchez at the offices of the Vice-Ministry of Public Security. Cerón Sánchez said that he heard Corporal Hernán Ayala Arias say that Lieutenant Gálvez had handed over command to Major Beltrán so as not to have problems with his soldiers. Corporal Ayala Arias did not refer to this fact.

258/ They were, including the four persons detained earlier, the following: José Félix Alfaro, Jesús Zepeda Rivas, María Zoila Rivas, Nicolás Flóres Alfaro, José Ulises Sibrián Rivas, Teresa de Jesús Argueta, José María Flóres, José Atilio Rivas, María de Jesús Sibrián and José Francisco Alfaro.

259/ Statement by Lieutenant Gálvez Gálvez at the offices of the Vice-Ministry of Public Security.

260/ Statements by Second Lieutenant Vásquez Alvarenga and Francisco Monzón Solis at the offices of the Vice-Ministry of Public Security.

On 6 March, at the offices of the Vice-Ministry of Public Security, Silverio Menjívar García said that Sergeant Tobar Guzmán had told him and other soldiers that "Major Beltrán had ordered him to lay the mines in order to kill the detainees".

261/ Statement by Sergeant Tobar at the offices of the Vice-Ministry of Public Security.

262/ Statement by private Manuel de Jesús Herrera Rivera at the offices of the Vice-Ministry of Public Security. In his judicial statement. Hernández Matute also said that Vásquez had designated Churute (Cruz Castro), Beltrán and himself to finish off the detainees. In his statement in the offices of the Vice-Ministry, Cruz Castro said that Vásquez designated him, (Méndez) Beltrán and (Hernández) Matute to finish off the detainees.

263/ Statement by Sergeant Jorge Alberto Tobar Guzmán and Napoleón Antonio Merino at the offices of the Vice-Ministry of Public Security of the Ministry of Defence, on 3 and 6 March 1989 respectively, and statement by Manuel de Jesús Herrera at the offices of the Vice-Ministry of Public Security.

264/ Statement by Francisco de Jesús Monzón Solís at the offices of the Vice-Ministry of Public Security. Judicial statement by Francisco Ponce Ramírez. Sergeant Tobar said in the same offices that a soldier had told him that the officers had ordered them to shoot after the mines were detonated, but not more than one round. Second Lieutenant Vásquez said that Major Beltrán ordered the soldiers to shoot to simulate an ambush.

265/ Statements by Manuel de Jesús Herrera Rivera, Napoleón Merino Martínez, Fermín Cruz Castro and Santos Victorino Díaz at the offices of the Vice-Ministry of Public Security. The first of these said that he saw Cruz Castro, Ponce Ramírez and Hernández Matute. The second said that he saw Cruz Castro, Ponce Ramírez, Hernández Matute and Méndez Beltrán. In his statement, Fermín Cruz Castro mentioned himself, Hernández Matute and Méndez Beltrán. Santos Victorino Díaz said that he saw soldiers "Churute" (Cruz Castro), "Ciguanabo" (Méndez Beltrán), "Chico Balazo" (Ponce Ramírez), Matute (Hernández Matute) and Corporal Ayala Arias shot the wounded detainees.

266/ Statement by Lieutenant Gálvez Gálvez.

267/ Statement by Lucio de Jesús Escoto Córdova at the offices of the Vice-Ministry of Public Security. After 3 March 1989, a document sent by the Fifth Brigade, based in San Vicente, listing the names of personnel in active service who had been in San Francisco canton, was added to the dossier of the court case. The name of Escoto Córdova was on the list (cf. folio 826).

268/ Folios 53 et seq. of the dossier.

269/ Report of the Commission for the Investigation of Criminal Acts.

270/ Ff. 867 and 966 of the dossier of the court case on the San Francisco massacre. He was also told that the accused were in custody at his disposal in the Vice-Ministry of Public Security.

271/ Sixth document, f. 1180 of the dossier.

272/ On 26 June 1990, the Supreme Court approved a motion by the Attorney General to transfer the case against Major Beltrán from the San Vicente court to the Sixth Criminal Court in San Salvador. Seventh document, f. 1326 of the dossier.

273/ Seventh document, f. 1243 of the dossier.

274/ Seventh document, f. 1284 of the dossier.

275/ Located on the Catarina estate, Department of San Vicente.

276/ The operation began at 8 a.m. and ended at 4 p.m. CIHD report, p. 1.

277/ The following items were seized in the operation: Military matériel: 3 machine-guns, 5 machine-gun magazines, 1 M-16 rifle, 1 AR-15 rifle, 8 M-16 magazines, 17 9-millimetre cartridges, 3 40-millimetre grenades, 1 YAESU radio, 1 Sony mini tape recorder, 2 flashlights, 4 rucksacks and 2 soldier's canteens.

Medicines and medical equipment: 30 injections, 3 antibodies for clinical use, a minor surgery kit, 1 sphygmomanometer and an unspecified quantity of antibiotics. CIHD report, p. 3.

It should be noted that COPREFA news bulletins Nos. 114 and 115 of 17 and 18 April 1989 did not indicate that the equipment seized included medicines and medical equipment.

278/ Madeleine Lagadec's body was fully clothed in the photographs allegedly taken shortly after the executions and published by COPREFA.

279/ Juan Antonio's skull had been smashed by a stone, the skulls of Clelia Concepción Díaz Salazar and Isla Casares had bullet exit wounds in the occipital area, María Cristina's body had, in addition to a shrapnel wound in the stomach, a bullet wound in the forehead with an exit wound in the back of the head.

280/ The autopsy was performed by Dr. Baccino and Dr. Quillien at the morgue of the Keufatras cemetery, Brest, France, at the request of the Public Prosecutor of the Court of First Instance of Brest.

281/ "... the bullet penetrated the skull through the right temple and exited through the left temple; the trajectory was virtually within a frontal and nearly horizontal plane at the level of the base of the skull." Autopsy report signed by Dr. Baccino E. of the SEBILAU Service, Morvan Hospital Research Centre, Brest, and Dr. Quillien J., commissioned by the Public Prosecutor of the Brest Court of First Instance (2 May 1989).

282/ Robert H. Kirschner, MD. Deputy Chief Medical Examiner, Office of the Medical Examiner, Cook County, Chicago, Illinois. Physicians for Human Rights (Board of Directors, Executive Committee).

283/ Report on the autopsy of Madeleine Lagadec. Robert H. Kirschner, MD, Chicago, 10 January 1993.

284/ Ibid.

285/ Report of the Centre d'Applications et de Recherches en Microscopie Electronique. Prepared by Mr. Le Ribault, Doctor of Science, Chairman and Director of the Centre, assisted by Mrs. Monique Roze, whose expert opinions were requested by the Public Prosecutor of the Court of First Instance of Brest, France, 11 May 1989.

286/ It is clear that Madeleine Lagadec was half-naked when she was shot, that she was dressed when her body was photographed by COPREFA, and that her trousers had been pulled down and she did not have any underwear on two days later when she was found by the witnesses who testified to the Commission.

287/ Given the difficulty of analysing the residues of the impact of bullets and also the significant amount of phosphorus present, the Centre d'Applications et de Recherches en Microscopie Electronique puts forward two theories: if the phosphorus was from the explosive, its presence would mean that the shot was fired at close range. It is impossible to determine the range of the shot since neither the type of firearm nor the type of ammunition used is known. The second theory suggests that, if the phosphorus was not from the explosive, it could have been from incendiary bullets based on white phosphorus which ignites in contact with the air. In that case the absence of traces of explosive would indicate that the shot was fired at intermediate range (5 metres or more). It would thus be neither a close-range (point-blank) nor a long-distance shot.

288/ The Commission on the Truth reviewed all the relevant documentation on the case of Dr. Begoña García and obtained testimony from an expert forensic pathologist as to the validity of and the conclusions reached by the official examination of the corpse and the clinical autopsy.

289/ Statement made by Lieutenant Colonel José Antonio Almendáriz Rivas to the First Criminal Court of Santa Ana at 12.30 p.m. on 19 August 1991.

290/ Letter No. 0630, dated 12 September 1990, from Lieutenant Gilberto García Cisneros of the National Police Third Command to the Commander of the Second Infantry Brigade.

The two judges of the respective district stated that they had never received notice or a summons to examine any corpse. Letter No. 320, dated 28 August 1991, sent by the Second Justice of the Peace of Chalchuapa, Raúl García Morales, and letter No. 457, dated 29 August 1991, sent by the First Justice of the Peace of Chalchuapa, Gloria Macal de Fajardo. Court dossier.

291/ Examination made in the First Criminal Court, Santa Ana, at 5.15 p.m. on 14 September 1990.

292/ Autopsy report, Pathology Department, Navarra Government Hospital, Navarra, Spain, 22 September 1990. Report prepared by the National Toxicology Institute, Ministry of Justice, Department of Madrid, at the request of the Second Court of Investigation of Pamplona (Navarra), Madrid, 30 October 1990. Report on the death of Dr. Begoña García Arandigoyen on 10 September 1990. Dr. Carlos Martín Beristaín, November 1990.

293/ The Commission on the Truth reviewed the dossiers of the investigations carried out by CIHD, the Second Justice of the Peace and the National Police in the case of the attack on FENASTRAS premises. It requested the armed forces, the National Police, the Treasury Police, the National Guard and CIHD to provide all relevant information on the 31 October 1989 bomb attacks. CIHD, the National Police and the National Guard provided the Commission with copies of the official dossiers and other documents concerning these incidents.

The Commission interviewed military officers, CIHD investigators, National Police agents, including the Chief of the Explosives Unit, leaders of FENASTRAS, COMADRES staff and numerous victims and witnesses. It summonsed Colonel Iván Reynaldo Díaz, Colonel Juan Vicente Eguizábal, Colonel Dionisio Ismael Muchuca, Colonel Carlos Mauricio Guzmán Aguilar and Colonel José Antonio Almendáriz Rivas, none of whom appeared.

294/ National Police patrol headquarters informed the Police Operations Centre that "D/T NI" (unidentified terrorist criminals) had "planted and detonated an explosive device". (Police Operations Centre news summary for the period from 6 p.m. on 30 October 1989 to 6 a.m. on 31 October 1989, National Police.)

295/ A report provided to the Commission on the Truth by the National Police stated that FENASTRAS "is organically linked to the clandestine organization Fuerzas Armadas de la Resistencia Nacional (FARN/RN) and its aim is to organize the working class to support FMLN ideological plans for destabilizing the Government of El Salvador by raising political, social and economic issues and the issue of human rights violations at the national and international levels, thereby mobilizing the working class to fight against the Government".

296/ On 18 September, National Police agents arrested 64 members of FENASTRAS who had taken part in a demonstration; some of them were tortured in police custody. El Mundo, 19 September 1989; confidential memorandum from Americas Watch. According to reports, one of those arrested, Julia Tatiana Mendoza Aguirre, later sued the National Police for alleged rape. She was one of those who died in the attack. The Commission received direct testimony from 364 people concerning cases of violence against trade unionists.

297/ On 19 October 1989, persons unknown carried out an attack on the homes of Rubén Zamora and Aronette Díaz, widow of Mario Zamora. On 17 October, Ana Isabel Casanova Porras, the daughter of Colonel Edgardo Casanova Vejar, was murdered.

298/ The attack left one civilian dead and more than five people injured. (Police Operations Centre news summary for the period 6 a.m.-6 p.m. on 30 October 1989, National Police.)

299/ According to article 149 of the Code of Criminal Procedure, in the case of offences "which have caused serious public outrage because of the circumstances of the crime or the status of the persons involved in them, either as victims or as suspects, the judge of first instance shall, under penalty of incurring a fine of 200 colones, personally carry out all the investigation proceedings ...". However, the proceedings were carried out by the justice of the peace, without any involvement of the judge of first instance.

300/ Inspection required by law, 31 October 1989, court dossier, folio 15.

301/ Report by Lieutenant Juan Antonio Aguirre Guerra, Commander of the Investigation Battalion, 31 October 1989, CIHD dossier, folio 10.

302/ Letter to the chief of the Investigations Section of the CIHD Executive Unit, signed by Detective Sergeant Juan Orlando Ramos Arevalo, dossier, folio 2.

303/ It was also determined that the explosion occurred in the passageway between the access wall and the wall of the FENASTRAS offices. The final report ruled out the possibility that the explosive device had been thrown from the street or that it had been a car bomb. See the report of the Technical Assistance Department of the Explosives Unit of the National Police, undated, CIHD dossier, folio 11.

304/ Letters to Colonel Héctor Heriberto Hernández, Director of the Treasury Police, Colonel Carlos Armando Carrillo Schlenker, Director of the National Guard, and Colonel Dionisio Ismael Machuca, Director of the National Police, dated 7 November 1989, CIHD dossier. The Treasury Police sent a reply to CIHD, describing nine of the victims as members of Restistencia Nacional.

305/ FBI report, 24 January 1990, court dossier, folio 50.

306/ Ibid.

307/ Ibid.

308/ At the time, the Movimiento Nacional Revolucionario (MNR) was a member of the political alliance Convergencia Democrática, which was part of the Frente Democrático Revolucionario (FDR).

309/ The Socialist International is a world-wide grouping of social-democratic, labour and socialist parties.

310/ Guillermo Ungo died a few months later in Mexico after a long illness.

311/ Objectively speaking, the Republic of Guatemala was not a safe place for the Salvadorian opposition to engage in political activity, mainly because of the domestic situation in Guatemala itself and the long-standing close ties between extreme right-wing Salvadorian groups and similar groups in Guatemala.

312/ Office of the President of the Republic. Presidential Staff. Security Department. Caso: Oquelí Colindres, Guatemala, May 1990, p. 2.

313/ Statement by Mario Antonio Sánchez Urizar, Letter No. 093 from the Mixco National Police substation to the magistrate of the First Criminal Court, 12 January 1990.

314/ Autopsy report No. 045-90 from Dr. Julio Cesar Pivaral Santos to the judge of the Jutiapa Court of First Instance, Jalpatagua, 15 January 1990.

315/ Office of the President of the Republic, Presidential Staff. Security Department. Caso: Oquelí Colindres, Guatemala, May 1990, p. 10.

316/ Ibid., p. 10.

317/ Robert Goldman and Tom Farer, Evaluation of the investigation and reports made by the Government of the Republic of Guatemala, October 1990, p. 32.

318/ A source reported that the Presidential Staff of the Republic of Guatemala obtained transcripts of routinely traced and recorded radio broadcasts which would have shed light on the incident. One expert in Guatemala confirmed that, technically speaking at least, the Presidential Staff itself could have made the recordings. The same expert confirmed that the basic errors in the police investigation were unusual, unless there was a definite unwillingness to make an investigation in this case.

319/ Letters sent to the President of the Republic of Guatemala, Mr. Serrano and to the Minister of Labour, Mr. Zolórzano. Interview with the Ambassador of Guatemala to the Republic of El Salvador. Visit by the Chairman of the Commission on the Truth to Guatemala City on 14 December 1992. Telephone request to President Serrano in January 1993.

320/ Dossier No. 73-DD H-90 of the office of the Attorney General of the Republic of El Salvador.

321/ The Commission on the Truth interviewed eyewitnesses and a number of officials who had been working at the United States Embassy at the time. It also reviewed the dossier of the criminal proceedings and inspected the scene of the arrest and disappearance of the students. In order to protect confidential sources, such sources are not quoted in this report.

322/

323/ All the testimony indicates that at least one car entered the Embassy courtyard. There are indications that more than one car entered.

324/ Judicial statements by Mr. Florentín Meléndez, dossier, f. 39, and Mr. Santiago Orellana Amador, ff. 41-42.

325/ Dossier, ff. 50, 52.

326/ See the report on the case in this chapter.

327/ On 31 January, the National Guard central barracks was searched, but the disappeared students were not found. F. 43. Cells at the central barracks of the Treasury Police, the Municipal Police and the National Police were searched without success. Ff. 39-40. Both the Chief of the National Police and the Director-General of the Treasury Police denied having detained the students. Ff. 52, 55.

328/ Declaration by the "Ejército Secreto Anti-Communista", 11 May 1980.

329/ Inter-American Commission on Human Rights. Case No. 9844, El Salvador.

330/ Ibid., Letter from Jemera Rone (Americas Watch) to the Commission on the Truth, dated 26 August 1992.

331/ Statement made by Cruz Antonio López Hernández to the Human Rights Commission of El Salvador (governmental) on 1 April 1987.

332/ Letter dated 23 February 1987 to Edwin Corr, United States Ambassador to El Salvador, from Congressman James L. Obestar et al.

333/ Letter dated 26 February 1987 to José Napoleon Duarte, President of El Salvador, from Congressman James L. Obestar et al.

334/ Regular meeting of CIHD, 1987, record No. 12, p. 22. According to the summary, the investigation was made "at the request of the Human Rights Commission (governmental)"; however, the Head of CIHD at the time, Mr. Julio Alfredo Samayoa, says that it was made at the request of the Ministry of Foreign Affairs.

335/ CIHD has informed us that he submitted his resignation approximately six months ago and has probably left the country.

336/ "Summary of the investigations conducted during the period from 15 May 1987 to 30 May 1987". CIHD, 30 May 1987, pp. 2-3.

337/ Ibid., p. 3.

338/ Regular meeting of CIHD, 1987, record No. 16, p. 26. That same day, CIHD administered a lie detector test to its source. The result was favourable. "Summary of the investigations conducted during the period from 15 May 1987 to 30 May 1987", CIHD, 30 May 1987, pp. 3-4. CIHD then planned to summons and take statements from the members of the air force and the National Guard implicated in the arrest and transfer and referred to in the reports identifying Rivas Hernández. "Work plan", CIHD, 30 May 1987, pp. 1-2.

339/ Regular meeting of CIHD, 1987, record No. 17, p. 27. There is no new report on the case until 11 August 1987. Ibid., 1987, record No. 27, p. 40. Thereafter, there are no further reports in 1987. The records of CIHD meetings for 1988 were not transmitted to the Commission on the Truth.

340/ The Commission interviewed many witnesses, civilian and military, and vetted public documents on the case.

341/ Copy of the Paratroop Battalion log of incoming and outgoing vehicles, provided to the Commission on the Truth on 5 December 1992.

342/ The Commission on the Truth had access to official documents confirming that Colonel Rodríguez was on duty on 18 and 19 August 1989.

343/ Copy of the Paratroop Battalion log of incoming and outgoing vehicles. Information available to the Commission on the Truth shows that it was common practice, in cases of disappearance, not to keep official records of arrests.

344/ El Mundo, 21 August 1989, 4 September 1989 and 6 September 1989.

345/ On 5 September 1989, through the Archdiocesan Legal Protection Office, a sister of Juan Francisco filed a writ of habeas corpus with the Supreme Court of Justice. Sara Cristina's mother also requested a remedy of habeas corpus for her daughter, but the Court never dealt with the case.

346/ Letter dated 23 August 1989 from the Director-General of the Treasury Police to the Archdiocesan Legal Protection Office, contained in the Massi Chávez case file, Archdiocesan Legal Protection Office.

347/ Case No. 1906, Human Rights Commission of El Salvador.

348/ To date, the armed forces have not transmitted the information requested from the Treasury Police.

349/ National Police report transmitted to the Commission on the Truth, 23 December 1992.

350/ Report of the former National Guard transmitted to the Commission on the Truth on 20 January 1993.

351/ The convent was - in the words of the experts - a "primary synchronous common grave". Patricia Bernardi, Mercedes Doretti and Luis Fondebrider, Archaeological Report, p. 15.

352/ Archaeological Report, p. 18.

353/ When the exhumed bone remains were analysed, the expert anthropologists were able to identify 117 anatomically articulated skeletons, as indicated in their report. After the laboratory analysis was done, it was possible to identify at least 143 skeletons. See Clyde Snow, John Fitzpatrick, Robert H. Kirschner and Douglas Scott, Report of Forensic Investigation.

354/ Report of Forensic Investigation, p. 1.

355/ The basis for this assertion is "the simultaneous presence of both deciduous and permanent teeth" and "the fact that their primary and/or secondary centres of ossification had not fused" (Archaeological Report, pp. 17-18; cf. ibid., p. 8).

356/ Ibid., p. 18.

357/ Report of Forensic Investigation, p. 1.

358/ "... The remains of a foetus were wedged in the pelvic region, with the head between the two coxal bones and on the sacrum" (Archaeological Report, p. 8). As indicated in the laboratory report, it was determined that the mother "was in the third trimester of pregnancy" (Report of Forensic Investigation, p. 1).

359/ Archaeological Report, p. 16.

360/ Ibid., p. 16.

361/ Ibid., p. 11.

362/ Ibid., p. 11. The report went on to say: "We are referring to grid squares B2, B3, C3 and the south-west corner of C2, where 82 bodies - almost 70 per cent of the skeletons - and 18 of the 24 concentrations of bone remains - almost 80 per cent - were found. In these grid squares, 159 bullet fragments were found: 102 fragments in B3; 13 fragments in B2; 30 fragments in C3; and 14 fragments in C2. In these grid squares, all these bullet fragments were in direct contact with bone remains. In other words, 159 bullet fragments had struck a large proportion of the 82 skeletons and 18 concentrations discovered in this zone."

363/ Ibid., p. 17.

364/ Ibid., p. 16. The report supported this assertion as follows:

> "(1) Observation of peri-mortem lesions, together with bullet fragments and holes in the floor underneath such fragments. This observation applies to skeletons 2, 5, 9, 10, 26, 57, 92, 110 and 113, located in grid squares C1, C2, C1, D2, B4, C3, B2, B3-C3 and B3 respectively ...;
>
> "(2) The only way such shots could have produced holes in the floor is by shooting downwards, either straight down or diagonally;

"(3) In the case of skeletons 2, 10, 92, 110 and 57, the bullets which made the holes in the floor were found in the area of the skull; in the case of skeleton 26, in the cervical vertebrae (very close to the skull)".

365/ Report of Forensic Investigation, p. 2.

366/ Report of Forensic Investigation, p. 3.

367/ "24 separate weapons were identified, consistent with at least 24 individual shooters" (Report of Forensic Investigation, p. 3).

368/ Ibid., p. 3. The experts who exhumed the bone remains reached the same conclusion. Cf. Archaeological Report, p. 17.

369/ Archaeological Report, p. 17.

370/ Archaeological Report, p. 18.

371/ Report of Forensic Investigation, p. 1.

372/ They also stated that all their conclusions "are stated with a reasonable degree of medical and scientific certainty" and that they were willing to testify in a court of law regarding these conclusions. See Report of Forensic Investigation, p. 3.

373/ The Washington Post, 29 April 1981.

374/ United Church Observer, October 1980, p. 40. Report on Human Rights in El Salvador, compiled by Americas Watch and the American Civil Liberties Union, 26 January 1982.

375/ Statement by the Government and armed forces of Honduras, 24 June 1980.

376/ Judicial Case No. 218-92, folio 4. Chalatenango Court of First Instance, 26 October 1992.

377/ To investigate the case, the Commission on the Truth reviewed the previous investigations and the court dossier, as well as documents from various other sources, and interviewed many confidential witnesses. For their protection, these sources are not quoted in this report.

378/ The mass, at 6 p.m., was in memory of the mother of a friend of his, Jorge Pinto, Jr., owner of the opposition newspaper El Independiente. Announcements of the mass had been published in two newspapers, La Prensa Gráfica and El Diario de Hoy, on Monday, 24 March 1980. Court dossier, ff. 42-43.

379/ Monsignor Romero lived in a small house on the grounds of the Hospital de la Divina Providencia.

380/ El Diario de Hoy, San Salvador, 11 February 1980, p. 53. Signed article.

381/ El Diario de Hoy, San Salvador, 23 February 1980, p. 34. Signed article.

382/ Sermon delivered on 17 February 1980.

383/ He and several colleagues met in late February 1980 with Héctor Dada, one of the new members of the second Junta. Dada mentioned the death on 23 February of one of the leaders of the Christian Democratic party, Mario Zamora (see report in this chapter on the assassination of Zamora). He also mentioned that he was aware of death threats against himself and the Archbishop, among others. Interview with priest Rafael Urrutia.

Monsignor Romero said that he took the threat seriously, and even said privately that "... I have never been so afraid, not even in the time of General Romero ...". Interview with Roberto Cuéllar.

Interview with Héctor Dada.

Monsignor Romero received warning of equally serious death threats from the Papal Nuncio in Costa Rica, Monsignor Lajos Kada. Diary of Monsignor Romero.

Subsequently, on Saturday 22 and Sunday 23 March, the nuns working in the Hospital de la Divina Providencia, where the Archbishop lived, received anonymous telephone calls threatening his life.

384/ Interview with Roberto Cuéllar.

Interview with priest Rafael Urrutia.

In the first week of March, Monsignor Romero met with the United States Ambassador to El Salvador, Robert White, whom he told of the threats on his life. Although the Archbishop did not give any specifics, he was keenly aware of the imminent danger and even confided to Ambassador White that: "My only hope is that when they kill me they don't kill many of us". Interview with Robert White.

385/ See report in this chapter.

386/ Statement made to the Commission for the Investigation of Criminal Acts by priest Fabián Conrado Amaya Torres. Court dossier on the investigation of the death of Monsignor Oscar Arnulfo Romero, case No. 134/80, Fourth Criminal Court, ff. 592 et seq.

387/ Police investigation conducted on 10 March 1980, transmitted to the courts on 14 March 1986. The bomb was made of 72 sticks of commercial dynamite which could be activated either by a timing device or by radio and were sufficient to kill several of those officiating at the altar and those sitting in the front pews. "(...) Moreover, it is a device which has never been planted by subversives who have always been active in our country, unless it is true that they have new experts, for two Japanese are known to have arrived (...). There is no supply in the country of electric detonators of the type used". Court dossier, ff. 494 et seq.

Neither the authorities of the Catholic Church nor the Archdiocesan Legal Aid Office received any official communication on the results of police action and all indications are that there were no further investigations. Interview with Roberto Cuéllar. Interview with Monsignor Ricardo Urioste.

388/ Sermon of 23 March 1980.

389/ Court dossier, f. 4.

390/ Interview with Judge Atilio Ramírez Amaya.

391/ The dossier does not contain the record of this inquiry, or the X-rays. Ibid.

392/ Ibid.

393/ Majors Roberto D'Aubuisson, Jorge Adalberto Cruz Reyes, Roberto Mauricio Staben; Captains Alvaro Rafael Saravia, José Alfredo Jiménez, Víctor Hugo Vega Valencia, Eduardo Ernesto Alfonso Avila; Lieutenants Federico Chacón, Miguel Francisco Bennet Escobar, Rodolfo Isidro López Sibrián, Carlos Hernán Morales Estupinián, Jaime René Alvarado y Alvarado; Antonio Cornejo Jr., Ricardo Valdivieso, Roberto Muyshondt, Fernando Sagrera, Amado Antonio Garay, Nelson Enrique Morales, Andrés Antonio Córdova López, Herbert Romeo Escobar, Fredy Salomón Chávez Guevara, Marco Antonio Quintanilla, José Joaquín Larios and Julián García Jiménez. Order of 12 May 1980 issued by Major José Francisco Samayoa, Acting Commander of CITFA, placing the detainees at the disposal of the Military Examining Judge.

394/ cf. Chronology.

395/ Order of 12 May 1980 issued by Major José Francisco Samayoa, Acting Commander of CITFA, placing the detainees at the disposal of the Military Examining Judge. Exhibit No. 10 (contents not recorded).

396/ Ibid. Exhibit No. 7.

397/ The diary contains notes on "223 ammunition", a type of .22 calibre bullet and "2 Bushmasters" and "5 AR-15s", both of these being types of rifles that fire .22 and .223 calibre bullets.

398/ For example, "Amado" refers to Amado Garay; "Avila", "el pelón Avila", "Eduardo Av." and "Eduardo A." refer to Captain Eduardo Avila; "Negro", "Nando Sagrera" and "Nando S." refer to Fernando Sagrera; and "Saravia" refers to Captain Alvaro Rafael Saravia himself. For the involvement of all of these persons, see below.

399/ "General Framework for the Organization of the Anti-Marxist Struggle in El Salvador", document seized at the San Luis estate on 7 May 1980. Arrest warrant of 12 May 1980 placing the detainees at the disposal of the Military Examining Judge, exhibit No. 4.

400/ Mr. Rey Prendes, a leader of the Christian Democratic party, made a statement to the press a few days after the video was shown; he denounced the simulation of "Commander Pedro Lobo" and revealed the criminal's true identity and background. Court dossier, ff. 152 et seq.

401/ In August 1985, the Office of the Attorney General presented the statement of Roberto Adalberto Salazar Collier, "Pedro Lobo", to the Fourth Criminal Court. On that occasion, he made the same allegations but did not mention D'Aubuisson's name. One of the alleged conspirators presented a written statement in February 1986 denying the allegations against him. Court dossier ff. 152 et seq. and f. 241. Judge Zamora's official requests to television stations to supply him with a copy of the video with Salazar Collier's statements were denied. The Attorney General's Office insisted that the stations reveal who had delivered and picked up the video, but the judge declared that there were no grounds for such a request. Court dossier, ff. 189, 200, 210, 212.

402/ Major D'Aubuisson cited a book entitled La conspiración del silencio by Manuel de Armas, which claimed that Cuban agents carried out the murder. La Prensa Gráfica, "Hace revelaciones mayor D'Aubuisson" (The revelations of Major D'Aubuisson), Friday, 6 September 1985, p. 2. El Diario de Hoy, Friday, 6 September 1985, p. 3.

403/ The armed forces appeared officially before the Commission on the Truth in October 1992 and alleged that FMLN had been responsible for the Archbishop's assassination without offering any evidence to back that assertion.

404/ Court dossier, f. 389.

405/ Statement by Amado Antonio Garay to CIHD on 19 November 1987. Court dossier, f. 274.

406/ Ibid.

407/ Ibid., f. 270.

408/ Ibid.

409/ Ibid., ff. 269 and 285.

410/ Court dossier, f. 289.

411/ Court dossier, f. 299.

412/ Public letter of Mr. Héctor Antonio Regalado dated 13 March 1989.

413/ He later became Chief of Security of the Legislative Assembly when D'Aubuisson was President of the Assembly.

414/ When he appeared before the Commission, Mr. Sagrera denied all involvement.

415/ Of these 817 cases, 644 (79 per cent) were extrajudicial executions.

416/ Left-wing actions that fell into the same category as violence perpetrated by the death squads are dealt with in the section of this report on abuses committed by the guerrillas.

417/ For details of how the death squads operated, see the account in this report of the assassinations of Monsignor Oscar Arnulfo Romero and Mario Zamora and the Sheraton case.

418/ The Organización Democrática Nacionalista, founded in 1963 by General José Alberto Medrano. Its network was national in scope, with representatives in each municipality, canton and community, and it had from 50,000 to 100,000 members. Members of ORDEN cooperated closely with security forces. One of their main tasks was to "detect" and report to the authorities the presence and activities of "subversives". They also took part in direct operations designed to intimidate those perceived to be enemies.

419/ See Chronology.

420/ After the 1979 coup, about 80 armed forces and security forces officers were retired. Interview with Héctor Dada.

421/ "General framework for the Organization of the Anti-Marxist Struggle in El Salvador", document confiscated at the San Luis estate on 7 May 1980, order of 12 May 1980 placing the detainees at the disposal of the Military Examining Judge, exhibit No. 4.

D'Aubuisson received military training in Taiwan.

422/ Ibid.

423/ Ibid.

424/ For those involved in the D'Aubuisson group, see the Archbishop Romero assassination case.

425/ The Commission interviewed witnesses and reviewed relevant documents from both confidential and public sources. To protect confidential sources, these are not quoted in this report.

426/ A witness maintains that, when they took this attitude, Zamora began to get up to leave and the meeting was on the verge of ending. Another leader, however, suggested that not everything in the document was necessarily true; after that, the meeting continued and the PDC political position became more flexible, at least as far as the document submitted to the armed forces was concerned.

427/ FPL leader who committed suicide in Managua.

428/ Napoleon Duarte was the most important leader of the Christian Democratic Party and his leadership extended beyond the party. He was a candidate for President with the Alliance in 1972, then exiled to Venezuela, a member of the third Revolutionary Junta, Provisional President in 1980 and finally elected President from 1984 to 1989. He died in 1989 after a long illness.

429/ The accusations were made in paid advertisements on television and in the press and in speeches broadcast on radio and television.

430/ Aronette Zamora is the current leader of the Unión Democrática Nacionalista (UDN) Party.

431/ Rubén Zamora was also a Christian Democratic leader at the time. He then left the party and was one of the founders of the Movimiento Popular Social Cristiano (MPSC).

432/ The line was dead for approximately 15 minutes.

433/ The Commission received testimony about the incident. This included testimony from people who corroborated the statements of the surviving witnesses. The Commission went to the village of San Juan Opico and made various inquiries.

The military authorities that were asked by the Commission to provide information did not do so. The Artillery Brigade informed it that it did not have the relevant file. Not all the officers summonsed appeared before the Commission.

434/ Slang name given to villagers who collaborated with the security forces or the military by providing them with information about activities going on in the area or the personal activities of villagers. During these operations, they accompanied the soldiers and pointed people out to them.

435/ By law, it is the justice of the peace who must make the preliminary inquiries, that is conduct a medical examination of the victims' bodies, assisted by a forensic expert, order the bodies handed over to the families for burial and take the first statements from witnesses.

436/ The Commission received public information from governmental and non-governmental sources and from individuals.

437/ An attempt was made on 23 September, when Viera and Francisco Menjívar, an official of the Ministry of Agriculture, were gunned down in front of the UCS offices in Nueva San Salvador. Viera was wounded and his companion killed.

438/ A review of existing testimony and other evidence, including the confessions of the two gunmen, statements by witnesses and by other members of the Intelligence Section of the National Guard and information received from governmental and non-governmental authorities, provides sufficient evidence that the events occurred as described below.

439/ Statement by José Dimas Valle Acevedo, 23 August 1982, f. 793. Also 23 September 1982, f. 831.

440/ He was nicknamed "fosforito".

441/ Statement by Valle Acevedo, f. 793.

442/ Statement by José Luis Sánchez, 18 August 1982, f. 755. See also statement by Amílcar Ruiz Linares, 19 August 1982, f. 757. A statement by Roque González, 19 August 1982, f. 758, indicates that López Sibrián usually carried an Ingram or a sub-machine-gun.

443/ Statement by Captain Eduardo Avila, 21 September 1982, f. 806. Statement by James Kevin Murphy, 30 October 1986. Statement by Gordon Fitch Ellison, 30 October 1986. A hotel employee also remembers having heard these words, although he did not make a statement to the judicial authorities.

See also statement by Teresa de Jesús Torres, 9 June 1981, f. 481. She noted that Christ's group made derogatory comments about Viera's group.

444/ Statement by Avila, f. 806.

445/ Statements by James Kevin Murphy and Gordon Fitch Ellison, 30 and 31 October 1986, regarding what Avila told both of them when he was given the lie detector test on 21 September 1982 at the General Staff. See also the statement by Torres, 24 June 1981, f. 480.

446/ Statement by Torres, f. 481.

447/ Statement by Valle Acevedo, f. 793.

448/ Ibid.

449/ Statement by Gómez González, 23 August 1982, f. 760. Statement by Uribe López, 27 August 1982, f. 767.

450/ Statement by Gómez González, f. 760. See also statement by Uribe López, 29 September 1982, f. 887.

451/ Statement by Gómez González, f. 760. He said he did not believe that López Sibrián had actually consulted Morán since López Sibrián had returned so quickly. Uribe López said that López Sibrián had been away for only three minutes. Statement by Uribe López, f. 887.

452/ Statement by Gómez González, f. 760.

453/ Statement by Gómez González, f. 760. Statement by Valle Acevedo, f. 794.

454/ Statement by Gómez González, f. 760. Statement by Valle Acevedo, f. 794. Other statements indicate that Avila handed over a 9-millimetre weapon. See, for example, statement by José Dagoberto Sambrano to the Commission for the Investigation of Criminal Acts on 29 October 1986.

455/ Statement by Gómez González, f. 760. Statement by Valle Acevedo, f. 794. Both González and Valle Acevedo identified photographs of Hans Christ as the person who had taken them to where the victims were.

456/ Statement by Gómez González, f. 760. Statement by Valle Acevedo, f. 794. Statement by Torres, f. 482.

457/ Marroquín Lara, the waiter who actually saw the two men shooting, told a witness that immediately after the murder, one of the gunmen stood over Viera's head and fired several bullets directly into it. Statement by Carlos Alfredo Portillo Morales, 11 June 1982, f. 717.

458/ The gunmen thought the house was Avila's, but Avila said that it was his brother's. See statement by Avila, f. 86.

459/ Statement by Valle Acevedo, f. 794. Statement by Gómez González, f. 760.

460/ Ibid.

461/ Statement by Sánchez on f. 755. Statement by Salvador Raymundo, 19 August 1982, f. 789. See also the interview with Valle Acevedo in the Commission for the Investigation of Criminal Acts, 24 January 1986, and the interview with Sánchez by that Commission on 27 January 1986. The day after the murders, Gómez González told him that he had killed Viera, but Sánchez could not recall any more details of the conversation because he took it as a routine matter typical of the missions entrusted to them.

462/ Avila was summonsed before the Commission on the Truth but did not appear.

463/ Morán was summonsed before the Commission on the Truth but did not appear.

464/ This instruction was given in the course of apparently aggressive and harsh interrogations involving threats, deprivation of food and use of drugs to which both Valle Acevedo and Gómez González alleged they were subjected.

See interview with Valle Acevedo and Gómez González in the Commission for the Investigation of Criminal Acts, 24 January 1986, para. 3.

465/ On 17 September 1982, Morán was questioned by the Medrano commission. On that occasion, he said that he had never seen López Sibrián about the matter and that there had been no discussion about the perpetrators. He then said that although he "definitely" knew Gómez González, he could not remember whether Gómez González had been his bodyguard on the night of the murders.

Statement by Denis Morán, f. 790. There is no question that Gómez González was Morán's bodyguard on the night of the murders.

466/ His ginger hair was dyed black, his moustache was shaved off, he wore make-up, he was in uniform and he had a hat like the others.

467/ López Sibrián remained in the armed forces until President Duarte, under pressure from the United States Government, discharged him on 30 November 1984. He was then arrested for running a kidnapping ring and is still in prison. López Sibrián has consistently maintained his innocence, even to the Commission on the Truth.

468/ The Commission could not locate Mr. Christ to request him to appear before it.

469/ The Commission received information from various sources concerning the execution of mayors by FMLN. In the two cases which are described in detail, the Commission received from witnesses direct testimony which it proceeded to substantiate. With regard to the other cases, it requested information from FMLN; in its reply, the latter conceded that the execution of mayors was a policy approved by FMLN, and it supplied the names of some of the mayors who had been executed.

470/ FMLN, La legitimidad de nuestros métodos de lucha, El Salvador, Central America, 30 October 1988, p. 15.

471/ The Commission reviewed the trial records, interviewed the accused and requested information from both FMLN and the Government.

472/ In order to prove to the Commission that there was a directive from the General Command that advisers and military personnel should be considered legitimate targets, FMLN supplied the following information: (a) a list of names of United States advisers and military personnel killed in El Salvador between February 1983 and March 1987; (b) copies of reports in the newspaper Venceremos (official FMLN newspaper) concerning United States intervention in the armed conflict and the death or execution of some of those advisers; and (c) a copy of a press release containing a statement by United States Senator Edward M. Kennedy. According to the press release, the Senator was concerned at the number of United States advisers and military personnel assigned to the country. The statement was dated 1990.

473/ According to the statements made by Juan Miguel García Meléndez and Abraham Dimas Aguilar in trial No. 42/86 before the First Military Court, they had only very general prior knowledge of the attack before it was carried out.

474/ According to information from the testimony on ff. 365 and 531 of trial dossier No. 42/86 of the First Military Court.

475/ According to cross-checking of the testimony on ff. 343, 365, 449, 485 and 531 of the trial dossier No. 42/86 of the First Military Court.

476/ According to cross-checking of the statements on f. 8 from trial dossier No. 67/A-89 of the Fifth Criminal Court.

477/ During trial No. 42/86 in the First Military Court, witnesses made the following statements: the shots were coming from all sides (f. 46); the first shots were fired by a United States marine sitting in the Flashback restaurant and he was the one who shot the guerrilla (f. 365); one American was carrying a firearm at the time (ff. 155 and 449); one marine had a firearm in his hands at the time (f. 453); the shot which wounded the guerrilla was fired by one of the marines (f. 512); one individual fled through the rear of Chili's restaurant (f. 531).

478/ In addition to testimony asserting that there was cross-fire, we find, attached to ff. 48, 305 and 308, reports concerning 34 spent cartridges found inside the Mediterranée and Chili's and the results of examinations of vehicles which were at the scene at the time of the attack. The latter established that two vehicles, one of them the attackers' vehicle, had bullet holes in their bodywork.

479/ Ff. 2 to 23 of trial dossier No. 42/86 of the First Military Court.

480/ According to the police report on f. 139 and witnesses' statements in ff. 453 and 531 of trial dossier No. 42/86 of the First Military Court.

481/ Police report on f. 139 of trial dossier No. 42/86 of the First Military Court.

482/ F. 285 of trial dossier No. 42/86 of the First Military Court.

483/ La Prensa Gráfica, 22 June 1985; f. 357 of trial dossier No. 42/86 of the First Military Court.

FMLN leaders maintained that the categorization of the executed United States marines as a military target had been the responsibility of members of the commando who planned the action. The latter, they said, had sufficient evidence to demonstrate that the four United States marines were in El Salvador to carry out military intelligence work. The information was obtained by means of:

1. Full-time personal monitoring of the activities of each marine;

2. Radio intercepts of the armed forces communication system; they said that the names of the executed persons came up constantly in these communications.

The Commission asked for written evidence to back up the statements, but was informed that they were not in a position to provide such material since, owing to the nature of the action and the fact that it had taken place during a conflict, it was extremely difficult to have documentation regarding that type of decision.

FMLN also informed the Commission that, in the subsequent evaluation of the operation, it had been determined that the commando had erred in the "choice of place" because the possibility that civilians might be endangered had not been taken into consideration. For that reason, orders had been issued to suspend attacks on that type of objective in similar places.

484/ Ismael Dimas was interviewed by Radio Venceremos of FMLN the week after the attack. His pseudonym was "Ulises". In the interview, he acknowledged having been the military chief who directed the operation and one of those who fired on the marines. This is corroborated by the information provided by the Government of El Salvador, FMLN and the witnesses who were interviewed. According to the information obtained as a result of the Commission's investigation, Ismael Dimas died later in combat.

485/ In this extrajudicial confession, the defendants also confessed to having participated in a series of incidents that they said took place between 1979 and 1985, but did not give any places or specific dates (ff. 108, 122 and 130 of trial dossier No. 42/86 of the First Military Court).

486/ For example, at the trial, no judicial statement was taken from the defendants. Instead, there is a document "confirming" the statements they had made to the National Guard. The document does not specify what statements the defendants had made and had therefore confirmed.

487/ The 1987 Amnesty Act was enacted in October 1987 by Legislative Decree No. 805.

488/ F. 742 of trial dossier No. 42/86 of the First Military Court.

489/ F. 752 of trial dossier No. 42/86 of the First Military Court. His appeal was rejected on the grounds that he was not a party to the criminal proceedings.

490/ F. 770 of trial dossier No. 42/86 of the First Military Court. Several newspapers published the reactions of United States officials who warned that it jeopardized $18.5 million in aid to El Salvador which was in the process of being approved by Congress.

491/ F. 770 of trial dossier No. 86 of the First Military Court.

Under Salvadorian law, in certain situations the General Command of the Armed Forces acts as a special court. When the decision regarding amnesty was brought to that court, it determined that the Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance and the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, were applicable to the case.

492/ F. 937 of trial dossier No. 42/86 of the First Military Court.

493/ There is insufficient evidence for the Commission to be able to say whether or not he participated in the operation. As in the case of the other defendants, he too, at his trial, was denied the benefit of the National Reconciliation Act.

494/ Andrade was arrested in 1989. FMLN leaders say that he was responsible, inter alia, for having given Government forces information about the biggest arms shipment ever seized from FMLN during the conflict. FMLN considers Andrade a traitor for having revealed this information to the Government of El Salvador and the United States Government, which he did while under arrest.

495/ To investigate this incident, the Commission interviewed some 70 individuals, many of them confidentially. The Commission has checked the information provided by witnesses against that obtained in other interviews and against court, police, newspaper, governmental, non-governmental and private sources.

496/ In his first two statements, Miranda said that his pseudonym was "José". On 3 February 1988, Miranda identified Romualdo Alberto Zelaya, who died on 27 January 1988 in a clash with National Police, as "José". F. 750.

497/ The number of men involved has been confirmed by what several witnesses saw. Vicente Vazquez and José Mejía saw the driver of the pick-up truck first, and a few minutes later saw two people boarding the same vehicle. Manuel de Jesús Serrano observed two individuals sitting on the sidewalk of the parking lot minutes before the murder. Aminta Pérez saw two individuals by a lamp post next to the parking lot minutes before the murder. F. 187.

498/ F. 94N, letter from Noé Antonio González, ballistics expert, to the chief of the CIHD Unit, 1 November 1987.

499/ F. 96N, letter from Noé Antonio González, ballistics expert, to the chief of the CIHD Unit, 1 November 1987.

500/ The National Police informed the Commission that ballistics experts do not have information on armed forces ammunition. See letter from the Director-General, Francisco Salinas, 23 February 1993.

501/ Anaya was the fourth member of CDHES-NG to be murdered; three of them had disappeared. See Lawyers Committee for Human Rights, Underwriting Injustice: AID and El Salvador's Judicial Reform Program, April 1989, p. 135.

502/ One of the five factions in the Frente Farabundo Martí para la Liberación Nacional (FMLN).

503/ See testimony of Herbert Anaya, 7 March 1986.

504/ See f. 508N, note by Corporal Adán de Jesús Morán Rivera, 26 May 1986. Complaint by Mirna Perla de Anaya to the Archdiocesan Legal Protection Office, 27 May 1986. He was one of a number of people belonging to popular organizations whom the Treasury Police arrested around that time.

505/ F. 527, statement by Herbert Anaya, 8 July 1986. Anaya says that he was subjected to physical and mental ill-treatment during his detention. See testimony of Herbert Anaya, 7 March 1986.

506/ See, for example, the paid announcement placed by Christian Legal Aid in El Mundo on 27 October 1987, "CGT también condena asesinato" (CGT also condemns murder), El Mundo, 27 October 1987. Paid announcement placed by the Human Rights Commission (governmental) in La Prensa Gráfica, 27 October 1987. Paid announcement placed by the Danish and Swedish sections of Amnesty International in El Mundo, November 1987. Paid announcement placed by the Danish and Swedish sections of Amnesty International in El Mundo, November 1987. P. Glickman, "El Salvador: US Mildly Condemns Rights Figure's Assassination", 26 October 1987.

507/ El Diario de Hoy, "50 mil colones ofrece Duarte por Asesinos de Anaya" (Duarte offers 50,000 colones for Anaya's murderers), 26 October 1987.

508/ Members of ERP confirmed that he was a member of that organization.

509/ Interview with Miranda. F. 677, statement by Officer Miguel Antonio Pineda Varela of the Technical Operations Department of the National Police, 18 January 1988.

510/ According to newspaper reports, the International Committee of the Red Cross (ICRC) did not visit him until 4 January, after the initial period of 72 hours in detention was over. See D. Farah, "Salvadoran Expands on Role in Killing; Prisoner Rebuts Family, Reaffirms Rebels Ordered Rights Death", The Washington Post, 8 January 1988, see also f. 775, Miranda's retraction before the court.

511/ F. 708. He does not remember when and said it had no effect. F. 775, Miranda's retraction. He told the Commission that once he had been given one or two tablets which he could not identify.

512/ See "Samayoa Denies Miranda Bribed", translation and transcript of a report by Guevara, M. A., Canal 12 Televisión, 8 January 1988, in Foreign Broadcast Information Service (FBIS), 12 January 1988, p. 12.

513/ See D. Farah, "Salvadoran Expands on Role in Killing", The Washington Post, 8 January 1988. J. LeMoyne, "Salvadoran in Jail Talk, Tells of Assassination", The New York Times, 8 January 1988. M. Miller, "Jailed Salvadoran Student Tells Disputed Version of Killing of a Rights Activist", The Los Angeles Times, 9 January 1988.

514/ Interview with Miranda. See also f. 708. According to Miranda, those same people took the comforts away when he retracted his statement. The former Minister of Justice has denied that members of the National Police were able to visit him, stating that the only people who were able to visit him were those whom Miranda agreed to see.

515/ The then Minister of Justice, Julio Samayoa, attributed the delay to the fact that court personnel were on holiday and therefore the defendant could not be handed over. See: "Duarte Comments on Case", translation and transcript of a report by M. A. Guevara, Canal 12 Televisión, 6 January 1988, in FBIS, 12 January 1988, p. 11; recording of the press conference. President Duarte stated that the delay was permissible because Miranda had been arrested for one offence and his participation in the murder had emerged later. See El Diario de Hoy, "Dice Reo Confeso: el ERP 'Purgó' a Anaya Sanabria Para Culpar F.A." ("Prisoner confesses: ERP 'purged' Anaya Sanabria in order to put the blame on the armed forces"), 6 January 1988. Recording of the press conference.

516/ Judge Luis Edgar Morales Joya fled El Salvador after an attempt on his life on 9 August 1991.

517/ See f. 775.

518/ F. 937N. The judge's decision reads as follows: "There is no doubt that ... the confessions of the accused ... do not meet the intrinsic requirements of any confession ...". He found that Miranda's statement was "the only incriminating evidence against him" and was thus not sufficient to move on to the adversary stage.

519/ F. 943-53. It argued that the confession "is sufficient evidence because it is consistent with the facts and with the accounts given by [three] witnesses" and because "it has not been established in the trial that the defendant confessed because he had been tortured, and the [first] two confessions are consistent with one another. See f. 951.

520/ In July 1991, the First Criminal Chamber of the Supreme Court of Justice reported a decision to change the venue of the trial to the Fifth Criminal Court of San Salvador, f. 1046. It had already been transferred to the Mejicanos Criminal Court.

521/ F. 1133. Civil penalties - the payment of 20,000 colones in compensation to Mirna Perla, Anaya's widow, and the corresponding loss of a number of political and civil rights - were also imposed. With respect to Anaya's murder, the judge decided to leave the final decision, on whether or not to apply the Amnesty Act, to the Commission on the Truth.

522/ The Commission dismisses, for lack of evidence, the theory that the murder was an ordinary crime.

523/ It is necessary to take into account how much time had elapsed between the murder and the time the photos were shown, and the fact that the witness only caught a glimpse of the murderers.

524/ Moreover, according to a lie detector test carried out by CIHD on 1 January 1988, Miranda was not lying when he said that he had participated. F. 889.

525/ The Archdiocesan Legal Protection Office has claimed that the armed forces were responsible. Americas Watch expressed concern that the murder might point to a reactivation of the death squads. L. Gruson, "Killing in Salvador Imperils Peace Talks", The New York Times, 28 October 1987. "La viuda de Anaya culpa a la Policía de Hacienda" (Anaya's widow blames the Treasury Police). "Dirigentes del ERP también culpan a las fuerzas armadas salvadoreñas, o a escuadrones de la muerte" (ERP leaders also blame the Salvadorian armed forces or death squads for the murder).

526/ According to a colleague at CDHES-NG, Anaya reported that while being held by the Treasury Police he had received a death threat from a senior officer of that force. In Mariona, Anaya was warned by a prisoner that prison guards were saying that they would kill him once he got out. F. 694, statement by Reynaldo Blanco in the First Criminal Court, 6 February 1988.

Anaya's father was arrested by the National Guard in March 1987 and interrogated about his son's activities. Anaya denounced his father's detention publicly. F. 707, paid advertisement in El Mundo, 21 March 1987.

After his release from Mariona, complained that he was being watched constantly by unknown persons, including some people using a vehicle with the registration number P-50-200. F. 702, paid advertisement by CDHES-NG on 3 June 1987. It never received an answer from the security forces to its request for information about the vehicle.

Radio Verdad, a clandestine right-wing station, denounced Anaya, apparently on 25 July 1987, as the "pernicious and corrupt head of the unofficial Human Rights Commission" and reported that "this Mr. Anaya, who does so much harm with so much disinformation about the country, will soon be exposed; Salvadorians must know who are the charlatans who head the groups which are seeking to destroy the Republic". F. 701, transcript of the broadcast.

On 3 August 1987, El Diario de Hoy reported that military intelligence had demonstrated the link between FMLN and humanitarian groups. According to the newspaper, a military source had said that "the people must know ... the real truth about the conflict in our country, but must not allow themselves to be misled by those false Salvadorians who are only doing grave harm to the population". F. 706.

527/ F. 694, statement by Reynaldo Blanco, 6 January 1988.

528/ A few months before the murder, CDHES-NG complained that some 10 heavily armed men had tried to force their way into its headquarters. F. 703, paid advertisement in El Mundo, 3 June 1987.

529/ Letter from Mirna Perla de Anaya to Mr. Edmundo Vargas Carreño, Executive Secretary of the Inter-American Commission on Human Rights, 15 April 1988. She also stated that the night before the murder, the house was watched by unknown persons in civilian clothing driving a blue pick-up truck and a silver-coloured Toyota limousine.

530/ In addition to examining the contents of the judicial dossier, as well as publications and reports on the case, the Commission interviewed many witnesses. It also obtained part of Mr. Guerrero's personal files on the assassination of the Jesuit priests.

531/ He was one of the founders of the Partido de Conciliación Nacional in 1962 and a co-author of the 1952 Constitution, President of the Legislative Assembly (1962-1965), Minister for Foreign Affairs (1969-1971), Chief of Staff for the President (1982), PCN Presidential candidate (1984) and President of the Supreme Court (1984-1989).

532/ El Diario de Hoy, "Asesinan a balazos al Dr. Francisco José Guerrero" (Dr. Francisco José Guerrero shot to death), 29 November 1989.

533/ Judicial statements by Víctor Manuel Rivera Monterrosa and Lilia del Milagro Avendaño de Guerrero.

534/ Statement by Víctor Manuel Rivera Monterrosa, 1 December 1989. Folio 173 of the dossier.

535/ Statement by witness Marcelino Antonio Hernández Ayala, 11 December 1989. Folio 228 of the dossier. Testimony of Manuel de Jesús Maldonado, on-the-spot police inspection, 28 November 1989, Folio 88 of the dossier. See also La Prensa Gráfica, "Asesinado ayer ex-presidente de la corte Dr. Francisco José Guerrero" (Dr. José Guerrero, former President of the Court, assassinated yesterday), 29 November 1989. Diario Latino (San Salvador), "Asesinan a 'Chachi' Guerrero" (Chachi Guerrero assassinated), 28 November 1989.

536/ Police report. Folio 79 of the dossier.

537/ Statement by Víctor Manuel Rivera Monterrosa, 1 December 1989. Folio 173 of the dossier.

538/ Report on the forensic medical examination, undated. Folio 84 of the dossier.

539/ Report of the Ballistic Technical Section of the National Police, 1 December 1989. Folio 168 of the dossier.

540/ Ibid., statement by Otto René Rodríguez. Folio 145 of the dossier.

541/ Testimony of Elías Cruz Perla, police report. Folio 88 of the dossier. Statement by Marcelino Antonio Hernández Ayala. Folio 228 of the dossier. A number of spent cartridges were found some 20 metres behind Mr. Guerrero's car. Sketch of the site, folio 43 of the dossier.

542/ Examination of the body of Angel Aníbal Alvarez Martínez. Folio 8 of the dossier.

543/ Examination, 4 April 1990. Folio 276 of the dossier.

544/ Police report. Folio 168 of the dossier. The judicial dossier contains no information on the bullets that hit Erazo Cruz.

545/ Testimony of Elías Cruz Perla to CIHD, 28 November 1989. Folio 88 of the dossier.

546/ The paraffin test is a technical chemical analysis used to determine whether a person has fired a weapon. The test is based on the presence of nitrate products deposited on the back of the hands when a firearm is fired.

547/ Statement by Erazo Cruz at the National Police medical clinic, 30 November 1989. Folio 153 of the dossier.

548/ Accused's statement by Erazo Cruz, 5 December 1989. Folio 193 of the dossier. Erazo Cruz recanted these statements before the court and also before the Commission on the Truth. Furthermore, "Efraín" had no known ties to the guerrillas (see below).

549/ Order for detention pending trial, 7 December 1989. Folio 219 of the dossier. The judge subsequently added the offences of causing grievous bodily harm, being a member of a subversive association and escape involving the use of violence (see below).

550/ Accused's statement by Erazo Cruz, 7 February 1992 (folio 405 of the dossier) confirmed by his testimony before the Commission, 4 September 1992.

551/ Penal Code, article 152.

552/ Penal Code, article 171.

553/ Penal Code, article 375.

554/ Penal Code, article 480.

555/ The charges of escape involving the use of violence and being a member of a subversive association remained pending in the Sixth Criminal Court. Then, at the end of July, the defence requested application of the National Reconciliation Act with a view to abatement of the criminal action at law relating to the subversive association charge. Article 1 of the Act states that amnesty shall be granted to all persons who participated in committing political crimes. Article 7 (c) of the Act states that in the case of accused persons whose cases are pending, the judge shall of his own motion decree a general dismissal of proceedings in favour of the defendants. The defence also requested the judge to order Erazo Cruz's release with regard to the charge of escape involving the use of violence. According to article 250, a person held pending trial shall be released when the penalty for the offence is a fine or a custodial penalty not exceeding a maximum of three years' imprisonment. The judge accepted the position of the defence and ordered a general dismissal of proceedings.

556/ Statement by Erazo Cruz to CIHD, 4 September 1989.

557/ El Mundo, "Hija de 'Chachi' Guerrero relaciona muerte de su padre con caso jesuitas" (daughter of Chachi Guerrero links her father's death with the Jesuit case), 30 January 1992.

558/ Description of the incident by José Napoleón Duarte: Duarte: Mi Historia, pp. 185-186. This version does not contradict the accounts of the incident subsequently published by FMLN.

559/ Originally the FMLN list contained the names of 34 people, nine of whom had disappeared after they were captured by Government forces. Likewise, in the active and secret negotiations, FMLN insisted on linking the release of Inés Duarte to that of 25 mayors and 96 war-wounded guerrillas (the latter finally totalled 101). It is important to mention the significant mediating role played by the Salvadorian church in the persons of Monsignor Rivera y Damas and Father Ignacio Ellacuría. The documents of FMLN and the Government of El Salvador likewise reveal clearly the mediating role played by Governments such as those of Colombia, Panama, Mexico and France, and by individuals such as Chancellor Willy Brandt and Hans Wischnewski of the Socialist International.

560/ Translated from English. British Broadcasting Corporation, "Release of Duarte's Daughter and Other Hostages in El Salvador". Source: Radio Venceremos 0045 GMT, 25 October 1985.

Another piece of information indicating FMLN involvement is to be found in the account of a guerrilla who says:

> "16 September ... Schafik Handal also got up early. He had spent a few days with us and was now hurrying to participate in the negotiations concerning Duarte's daughter". Las Mil y Una Historias de Radio Venceremos, José Ignacio López Vigil, UCA Editores, p. 401.

561/ The Supreme Court referred to the Commission 30 cases involving the death of judges, but according to the information received, two of the judges had died of natural causes.